

1986

Countryside Homeowners Association v. John Melehes : Brief of Respondent

Utah Supreme Court

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UTAH COURT
BRIEF

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DOCKET NO.

860142

IN THE SUPREME COURT OF THE STATE OF UTAH

COUNTRYSIDE HOMEOWNERS
ASSOCIATION, A Utah Non-
Profit Corporation,

Plaintiff/Respondent,

vs.

JOHN MELEHES and IRIS
MELEHES,

Defendants/Appellants.

860142-CA
Case No. 20834

BRIEF OF RESPONDENT COUNTRYSIDE HOMEOWNERS ASSOCIATION

Appeal from Judgment of the
Third Judicial District in and for Salt Lake County,
Honorable John A. Rokich presiding

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Clerk Supreme Court Utah

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vs.

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Defendants/Appellants.

BRIEF OF RESPONDENT COUNTRYSIDE HOMEOWNERS ASSOCIATION

STATEMENT OF THE ISSUE PRESENTED ON APPEAL

Whether Appellants have raised a sufficient issue of fact concerning their conduct of business in the condominiums in violation of the recorded Declaration of Condominium.

DETERMINATIVE STATUTORY PROVISION

Utah Code Ann. § 57-8-8 (1973):

Each unit owner shall comply strictly with the covenants, conditions and restrictions as set forth in the declaration or in the deed to his unit, and with the bylaws and/or house rules and with the administrative rules and regulations drafted pursuant thereto, as either of the same may be lawfully amended from time to time, and failure to comply shall be ground for an action to recover sums due for damages or

injunctive relief or both, maintainable by the manager or management committee on behalf of the unit owners, or in a proper case, by an aggrieved unit owner.

STATEMENT OF THE CASE

Nature of the Case

This is an appeal from a summary judgment of the Third Judicial District Court, Judge John Rokich presiding, enjoining appellants from conducting business in their condominiums contrary to the recorded Declaration of Condominium.

Course of Proceedings Below

Respondent Homeowners Association (the "Association") moved for summary judgment on June 17, 1985 and filed a Memorandum of Points and Authorities, relying on statements made by Iris Melehes in her deposition. Appellants John and Iris Melehes ("Melehes") filed a memorandum in opposition to the Association's motion, and also moved the court for leave to file a third-party complaint against the developers of the condominium complex. The matter was submitted to the District Court on the basis of the record on July 2, 1985 by stipulation of counsel. By minute entry dated August 1, 1985, the court granted the Association's motion for summary judgment and granted Melehes' motion to file a third-party complaint. The Association thereafter submitted a Summary Judgment and Injunction which was entered by the court on August 23, 1985. This appeal followed.

Respondent moved this court for summary affirmance and filed a memorandum in support thereof on November 12, 1985. This Court denied the Association's motion on December 19, 1985.

Statement of Facts

1. On or about August 30, 1982, Harmer-Lambert, Inc. entered into a Declaration of Condominium of the Countryside Condominium Project (the "Declaration"), a true and correct copy of which is attached hereto as Exhibit "A."

2. The Association is that group of Owners defined in paragraph 15 of Section I of the Declaration.

3. Melehes owns two condominium units in the Countryside Condominium development. (Exhibit "B," deposition of Iris Melehes, p. 4.)

4. Pursuant to the Declaration, "all units are intended to be used for residential housing and are restricted to such use." (Exhibit "A," Declaration, paragraph 7 of Section III.)

5. Melehes is using the units for business purposes, as evidenced by the following undisputed facts:

(a) The condominiums serve as the business address of two separate business known as Iris Medical and Insurance Consultant Systems, both businesses being owned by Melehes. (Exhibit "B," deposition, pp. 9 and 10.)

(b) Iris Medical collects billings for approximately 26 to 28 doctors, and Insurance Consultant Systems is employed by all but three of those doctors and assists such doctors in getting paid by insurance companies. (Id., pp. 13 and 14.)

(c) Iris Medical employees 10 to 15 independent contractors. (Id., p. 10.)

(d) One room of a condominium is devoted entirely to a Wang 2200 computer system. The Wang System was installed because of its increased capacity over the pre-existing system. (Id., p. 19.)

(e) Unit 637 has three Salt Lake business telephone lines and one Provo business line routed into it. (Id., pp. 19 and 26.) Melehes also uses a personal line for business of Insurance Consultants Systems. (Id., p. 26.)

(f) Up to six independent contractors visit the units in a given day for business purposes. (Id., p. 20.)

(g) Three persons spend their full time at the condominiums doing the business, namely, Iris Melehes, a phone receptionist, and a daughter of Melehes who helps run the computer. (Id., p. 22.) In addition, a part-time person works at the premises between 12 and 16 hours per week. (Id., p. 23.)

(h) Melehes holds monthly group meetings with subcontractors, some of which are held at the condominium units. (Id., p. 25.)

(i) Doctors come to the condominium units for business purposes. (Id., pp. 27 and 28.)

(j) At any one time, five to ten cars are parked in and around Melehes' condominiums for business purposes.

(Exhibit "C," affidavit of Jay Rhodes, ¶ 4.)

(k) The business use continues to the present time. (Id., ¶¶ 4 and 5.)

(l) Iris Melehes admits the business use, as set forth on page 28 of her deposition:

Q. (By Mr. Smith) Okay. Well, then, Mrs. Melehes, is there much doubt you're running a business out of the condominiums?

A. I have always run a business out of my home.

Q. Ok. Including 637 [the condominium unit number]?

A. Yes. I am self-employed. I operate my business. It is computer--it is a computer billing business."

6. The Meleheses claim they disclosed to the developer that they desired to operate a computer billing business in one of the units. (Affidavit of Iris Melehes in Opposition to the Association's Motion for Summary Judgment, ¶ 3.)

7. Iris Meheles admits business use but claims that the business use is less extensive than claimed by the Association. (Id., ¶ 5.)

SUMMARY OF ARGUMENT

The Declaration of Condominium provides that "all units [of the condominiums] are intended to be used for residential housing and are restricted to such use." There is no dispute of fact that Melehes runs a business in the condominiums. The Association is entitled to enforce the Declaration of Condominium, and is entitled under statute to injunctive relief. Alleged statements by the developer do not abrogate the clear terms of the recorded Declaration. There being no dispute about business use in violation of the Declaration, the trial court's granting of summary judgment was proper.

ARGUMENT

POINT I

THE DISTRICT COURT'S AWARD OF SUMMARY JUDGMENT AND AN INJUNCTION WAS PROPER.

On the basis of undisputed facts, it is apparent that Melehes is operating a business, and in fact a very substantial business, out of the condominiums. This business use constitutes a clear violation of the Declaration, which restricts use of the condominiums to use for residential housing.

The Condominium Ownership Act, as set forth in Utah Code Ann. § 57-8-8 (1973), provides for an injunction as a proper remedy for violation of the Declaration:

Each unit owner shall comply strictly with the covenants, conditions and restrictions as set forth in the declaration or in the deed to his unit, and with the bylaws and/or house rules and with the administrative rules and regulations drafted pursuant thereto, as either of the same may be lawfully amended from time to time, and failure to comply shall be ground for an action to recover sums due for damages or injunctive relief or both, maintainable by the manager or management committee on behalf of the unit owners, or in a proper case, by an aggrieved unit owner.

Accordingly, the Association was entitled to and was properly awarded summary judgment and a permanent injunction prohibiting Melehes from further conduct of business out of the condominium units.

Melehes asserts that, prior to their purchase, Harmer-Lambert, Inc., the developer of the property, gave oral permission to operate the computer in one of their units and that such statements somehow abrogate the Declaration. Meheles' claim of nonenforceability of the Declaration because of statements by the developer is without merit.

Melehes' claim is not unlike that made by the appellants in the very recent case before this court of Secor v. Knight, 29 Utah Adv. Rep. 15, Case No. 18665 (March 3, 1986), wherein this court stated the issue as follows:

The primary issue before this Court is whether, under the circumstances of this case, the restrictive covenant limiting use to a single-family dwelling is enforceable as to the Knights. For the reasons stated below, we hold that it is.

Id. at 16. In Secor, the Knights claimed that an agent of the developer had told them that they could use the basement of

property they were purchasing for an apartment. The restrictive covenants placed of record before the Knights closed their purchase limited use of the property to a single-family dwelling. The Knights built the apartment and the neighbors sued to enjoin further violation of the restrictive covenant. The Knights then brought in the developers by third-party complaint. The trial court enjoined the Knights from further operation of any apartment in their home, and ordered judgment in favor of the developers on the basis of no cause of action.

This Court upheld the ruling of the trial court, holding that the claimed oral representations, which involved terms relating to the title of the property purchased by the Knights, were merged into the deed and extinguished. Id. at 17. In this case, as in Secor, the restrictive covenants are terms relating to the title of property purchased by Melehes. In this case, as in Secor, Melehes claims reliance on representations by the developer which were contrary to recorded restriction. For precisely the same reasons and on almost the same facts as set forth in Secor, this Court should affirm the trial court's decision below.

The association also submits that the alleged waiver is neither written nor recorded, and is therefore invalid. In this connection, the Condominium Ownership Act provides:

The declaration, any amendment, any instrument by which the provisions of this act may be waived, and every instrument affecting the property or any unit shall be entitled to be recorded. Neither the declaration nor any amendment thereof shall be valid unless recorded.

Utah Code Ann. § 57-8-12(1) (1973) (emphasis added). See also Exhibit "A," Declaration, paragraph 37 of Section III. The Act further requires that restrictions as to use be stated in the Declaration. Utah Code Ann. § 57-8-10(2)(g) (Supp. 1985).

The basis for requiring a written and recorded amendment is sound. Subsequent purchasers of condominium units in the project are entitled to rely on the public record as disclosing the permissible uses to which the units may be put. The restriction on use contained in the Declaration (which must be recorded before conveyance of units in a condominium project), and in any written, recorded amendments thereto, run with the land, and thus bind all purchasers of the property. Utah Code Ann. § 57-8-10(1) (Supp. 1985). See also Exhibit "A," Declaration, paragraph 40 of Section III. Uses not disclosed in the record may adversely impact a purchaser of condominium units by, for example, increasing the cost of insurance to the project or creating a nuisance. If oral waivers of the conditions and restrictions were permitted, the reliability of the public record would be undermined, contrary to the intent of the legislature in requiring that all restrictions and amendments

thereto be recorded. As bona fine purchasers, subsequent buyers must not be placed under a duty to investigate the existence of possible oral waivers of the provisions of the recorded documents.

Based on the clear rule of the Secor decision and sound public policy relating to the integrity of recorded documents, Melehes is bound by the Declaration and the trial court's decision below should be upheld.

POINT II

RESPONDENT SHOULD BE AWARDED ITS ATTORNEY'S
FEES INCURRED ON APPEAL.

Rule 33, U.R.A.P., provides that a party is entitled to damages, attorney's fees and single or double costs if the appeal is either frivolous or taken for delay. Such an award is appropriate in this case. Mrs. Melehes admitted in her deposition that she was operating a business out of the condominium in violation of the Declaration, which is clear and unambiguous in prohibiting the arrangement. Melehes, however, still occupies the subject condominium units and uses such units for business purposes. The only reasonable conclusion is that the appeal was interposed as a device to postpone the time when Melehes will be required to move.

CONCLUSION

Appellants are clearly using the condominium units for business in violation of the Declaration of Condominium. There is no dispute of fact on this issue. The association is therefore entitled to the remedy of injunction to prohibit such use, and the judgment of the District Court should be affirmed.

In view of the clear use of the condominiums for business, Meheles' bringing of this appeal was done for the purpose of allowing Meheles to operate a business during the process of appeal, for which the Association should be awarded its attorney's fees incurred in this appeal.

DATED this 24th day of April, 1986.

SNOW, CHRISTENSEN & MARTINEAU

By



Damian C. Smith
Attorneys for Respondent
Countryside Homeowners
Association

SCM3611C

EXHIBIT "A"

DECLARATION OF CONDOMINIUM

AFTER RECORDING, PLEASE RETURN TO:

Robert J. Grow, Esq.
ROOKER, LARSEN, KIMBALL & PARR
185 South State Street
Suite 1300
Salt Lake City, Utah 84111

DECLARATION OF CONDOMINIUM

OF THE

COUNTRYSIDE CONDOMINIUM PROJECT

3706729

KATE L. UHLM
RECORDER
SALT LAKE CO. JN
UTAH

AUG 30 3 49 PM '82

REC'D

1:10 P

THIS DECLARATION is made and executed this 30th day of August, 1982, by HARMER-LAMBERT, INC., a Utah corporation (hereinafter referred to as "Declarant").

RECITALS:

A. Declarant is the record owner of that certain Tract of real property more particularly described in Article II hereof.

B. Various improvements have been or will be made to the Tract so as to enable its use and operation as a Condominium Project. The construction of all of such improvements has been or will be performed in accordance with the information contained in this Declaration and in the Record of Survey Map.

C. Declarant desires, by filing this Declaration and the Survey Map, to submit said Tract and all improvements now or hereafter constructed thereon to the provisions of the Act as a Condominium Project to be known as the "Countryside Condominium Project."

D. Declarant intends to sell and convey to various persons fee title to the individual Units contained in the Project, together with the undivided ownership interests in the Common Areas and Facilities appurtenant to such Units, subject to the covenants, restrictions, and limitations herein set forth.

NOW, THEREFORE, for the foregoing purposes, Declarant hereby makes the following Declaration:

I. DEFINITIONS

When used in this Declaration (including in that portion hereof entitled "Recitals"), each of the following terms shall have the meaning indicated. Any term used herein which is defined by the Act shall, to the extent permitted by the context hereof, have the meaning ascribed by the Act.

1. Act shall mean and refer to the Utah Condominium Ownership Act, Utah Code Annotated §§ 57-8-1 through 57-8-36 (Supp. 1981).

2. Declaration shall mean and refer to this Declaration of Condominium of the Countryside Condominium Project, as the same may hereafter be modified, amended,

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supplemented, or expanded in accordance with law and the provisions hereof.

3. Record of Survey Map, Survey Map, or Map shall mean and refer to the Record of Survey Map, filed herewith, entitled "Record of Survey Map of the Countryside Condominium Project," executed and acknowledged by Declarant on ~~20 August~~, 1982, consisting of 8 sheets, and prepared and certified to by Richard E. Johansen, a duly registered Utah Land Surveyor holding Certificate No. 4389, as the same may hereafter be modified or amended in accordance with law and the provisions hereof.

4. Management Committee or Committee shall mean and refer to the Management Committee of the Countryside Condominium Project.

5. Common Areas and Facilities or Common Areas shall mean, refer to, and include:

(a) The real property and interests in real property which this Declaration submits to the terms of the Act, including the entirety of the Tract (but excluding individual Units).

(b) All Common Areas and Facilities designated as such in the Survey Map.

(c) All ~~Lin~~ Common Areas and Facilities.

(d) All foundations, roofs, and lobbies constituting a portion of or included in the improvements which comprise a part of the Project, and any halls, corridors, stairs, stairways, entrances, and exits which are designed for the use of more than one Unit.

(e) All installations for and all equipment connected with the furnishing of Project utility services such as electricity, gas, water, and sewer; excepting, however, all such installations located within the boundaries of a specific Unit which serve only that Unit.

(f) All tanks, pumps, motors, fans, compressors, ducts, and in general all apparatus, installations, and facilities included within the Project and existing for common use.

(g) The Project outdoor lighting, fences, landscaping, sidewalks, open parking spaces, and roads.

(h) All portions of the Project not specifically included within the individual Units.

(i) All other parts of the Project normally in common use or necessary or convenient to its use, existence, maintenance, safety, or management.

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6. Limited Common Areas and Facilities or Limited Common Areas shall mean and refer to those Common Areas and Facilities designated in this Declaration or in the Survey Map as reserved for the use of a certain Unit to the exclusion of the other Units.

7. Unit shall mean and refer to one of the apartment spaces which is designated as a Unit on the Record of Survey Map and in Exhibit "A" attached hereto (and incorporated herein by this reference). All walls on the perimeters of a Unit shall constitute a part of the Common Areas and Facilities. A Unit shall include any walls, partitions, floors, ceilings, and stairs which are wholly contained within its vertical and horizontal perimeters and the surfaces of any floors, ceilings, walls, or coverings which bound it; provided, however, that a Unit shall not include pipes, wires, conduits, or other utility lines running through it which are utilized for or which serve more than one Unit and shall not include any load-bearing walls or floors comprising a part of the Building in which the Unit is contained. A Unit shall also include all fixtures contained within its vertical and horizontal perimeters and intended for the sole use of such Unit.

8. Unit Number shall mean and refer to the number, letter, or combination thereof which designates a Unit in the attached Exhibit "A" and on the Record of Survey Map.

9. Condominium Unit shall mean, refer to, and include a Unit together with its appurtenant undivided ownership interest in the Common Areas and Facilities, and its appurtenant right to exclusive use of Limited Common Areas associated with such Unit.

10. Unit Owner or Owner shall mean and refer to the person who is the owner of record (in the office of the County Recorder of Salt Lake County, State of Utah) of a fee or an undivided fee interest in a Condominium Unit. Notwithstanding any applicable theory relating to a mortgage, deed of trust, or like instrument, the term Unit Owner or Owner shall not mean or include a mortgagee or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

11. Building shall mean and refer to a structure containing or to contain Units.

12. Building Number shall mean and refer to the number, letter, or combination thereof (if any) which designates a Building in the attached Exhibit "A" and on the Record of Survey Map.

13. Size shall mean and constitute the area of the floor space within a Unit, in square feet, rounded to the nearest whole number ending in zero (e.g., 1020, 1180, 1510), and computed and determined as follows on the basis of dimensions shown on the Survey Map. The measurements used in determining Size shall run from the interior surfaces of the walls surrounding the Unit concerned and each separate level, story, or floor contained within or making up the Unit shall be taken into

BOOK 5405, PAGE 2314

account and, subject to the following provisions, shall augment the Size thereof. For purposes of determining Size: (i) The area of any space in a Unit intended for garage or vehicle parking purposes shall be completely excluded; (ii) With respect to any Unit which includes or contains more than one separate level, story, or floor, the area of any basement shall be considered to be one-half (1/2) of its actual area and the area of any level, story, or floor located one or more full levels or stories above the first level or story shall be considered to be three-fourths (3/4) of its actual area; but (iii) If a Unit includes or contains only one level, story, or floor, wherever located, the area thereof shall not be discounted as provided in the preceding item (ii). So long as it substantially complies with the provisions of this Section 13 and is not arbitrary, Declarant's determination of the Size of a Unit, as set forth in this Declaration or in any amendment hereto shall be conclusive.

14. Common Expenses shall mean and refer to all sums which are required by the Management Committee to perform or exercise its functions, duties, or rights under the Act, this Declaration, any Management Agreement which may be entered into for operation of the Project, and such rules and regulations as the Management Committee may from time to time make and adopt. Common Expenses shall include all sums lawfully assessed against the Unit Owners, expenses of administration, maintenance, repair or replacement of the Common Areas and Facilities, expenses agreed upon as Common Expenses by the Association, and expenses declared Common Expenses by the provisions of this Declaration or the Act.

15. Association of Unit Owners, Owners Association, or Association shall mean and refer to all of the Owners taken as, or acting as, a group in accordance with this Declaration and the Map.

16. Mortgage shall mean and include both a first mortgage on any Condominium Unit and a first deed of trust on any Condominium Unit.

17. Mortgages shall mean and include both a mortgage under a first mortgage on any Condominium Unit and a beneficiary under a first deed of trust on any Condominium Unit.

18. Eligible Mortgagee shall mean and include a Mortgagee which has requested notice of certain matters from the Association in accordance with the sixth Paragraph of Section 36 of Article III of this Declaration.

19. Eligible Insurer or Guarantor shall mean and include an insurer or governmental guarantor of a Mortgage which has requested notice of certain matters from the Association in accordance with the sixth Paragraph of Section 36 of Article III of this Declaration.

20. Tract shall mean, refer to, and consist of the real property which Article II of this Declaration submits to the terms of the Act.

BOOK 5405 PAGE 2312

21. Condominium Project or Project shall mean and refer to the Countryside Condominium Project.

22. Declarant shall mean and refer to HARTER-LAMBERT, INC., a Utah corporation, and/or any successor to said corporation which, either by operation of law or through a voluntary conveyance, transfer, or assignment, comes to stand in the same relation to the Project as did its predecessor.

II. SUBMISSION

There is hereby submitted to the provisions of the Act, as the Tract associated with the Countryside Condominium Project, the following-described parcel of real property situated in Salt Lake County, State of Utah:

See Exhibit "B" attached hereto and incorporated herein by this reference.

TOGETHER WITH: (i) all Buildings, if any, improvements, and structures situated on or comprising a part of the above-described parcel of real property; (ii) all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the said parcel; and (iii) all articles of personal property intended for use in connection with said parcel.

ALL OF THE FOREGOING IS SUBJECT TO: all liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all Patent reservations and exclusions; any mineral reservations of record and rights incident thereto; all instruments of record which affect the above-described Tract or any portion thereof, including, without limitation, any mortgage or deed of trust; all visible easements and rights-of-way; all easements and rights-of-way of record; any easements, rights-of-way, encroachments, or discrepancies shown on or revealed by the Survey Map or otherwise existing; an easement for each and every pipe, line, cable, wire, utility line, or similar facility which traverses or partially occupies the above-described Tract at such time as construction of all Project improvements is complete; and all easements necessary for ingress to, egress from, maintenance of, and replacement of all such pipes, lines, cables, wires, utility lines, and similar facilities.

RESERVING UNTO DECLARANT, however, such easements and rights of ingress and egress

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over, across, through, and under the above-described Tract and any improvements now or hereafter constructed thereon as may be reasonably necessary for Declarant or for any assignee or successor of Declarant (in a manner which is reasonable and not inconsistent with the provisions of this Declaration): (i) To construct and complete each of the Buildings and all of the other improvements described in this Declaration or in the Survey Map recorded concurrently herewith, and to do all things reasonably necessary or proper in connection therewith; and (ii) to improve portions of the Tract with such other or additional improvements, facilities, or landscaping designed for the use and enjoyment of all the Owners as Declarant or as such assignee or successor may reasonably determine to be appropriate. If, pursuant to the foregoing reservations, the above-described Tract or any improvement thereon is traversed or partially occupied by a permanent improvement or utility line, a perpetual easement for such improvement or utility line shall exist. With the exception of such perpetual easements, the reservations hereby effected shall, unless sooner terminated in accordance with their terms, expire twenty (20) years after the date on which this Declaration is filed for record in the office of the County Recorder of Salt County, Utah.

1.II. COVENANTS, CONDITIONS, AND RESTRICTIONS

The foregoing submission is made upon and under the following covenants, conditions, and restrictions:

1. Description of Improvements. The improvements included in the Project are now or will be located upon the Tract. The significant improvements contained in the Project include sixteen (16) Buildings, eighty-seven (87) Units, a swimming pool and related facilities, a recreational vehicle parking area, two (2) tennis courts, carports, and asphalt or concrete driveways and parking areas. The location and configuration of the improvements referred to in the foregoing sentence are depicted on the Survey Map. The Project also contains other improvements of a less significant nature, such as outdoor lighting, fencing, landscaping, and concrete sidewalks and walkways. There may also be located within the Common Areas certain man-made ponds or small streams. The water and water rights for such ponds or streams is to be provided, if at all, by and at the expense of the Association, and the Declarant has not conveyed to the Association or the Owners any water rights or water stock for such purposes. The Survey Map shows the number of stories and the number of Units which are contained in the Buildings included in the Project. Each of said Buildings is

BOX 5405 NW 2341

composed of the following materials: all load bearing and non-load bearing walls are wooden frame and studded with wood; the basement floor and foundation walls are of concrete; the ground floor, second floor, third floor, and fourth floor are of wooden joists covered with plywood; the roof is of wooden trusses, joists, or laminated beams surfaced with plywood and shake shingles; interior walls are surfaced with sheetrock or gypsum board; and exterior walls are surfaced with cedar siding, stone, and brick.

2. Description and Legal Status of Units. The Record of Survey Map shows the Unit Number of each Unit, its location, dimensions from which its size may be determined, and the Common Areas and Facilities to which it has immediate access. Each Condominium Unit shall be capable of being separately owned, encumbered, and conveyed. The undivided ownership interest in the Common Areas and Facilities appurtenant to a Unit may not be partitioned from the balance of the Common Areas and Facilities by an action pursuant to Chapter 39 of Title 78, Utah Code Annotated (1953).

3. Contents of Exhibit "A". Exhibit "A" to this Declaration furnishes the following information with respect to each Unit contained in the Project: (i) The Unit Number; (ii) The Number of the Building in which it is contained; (iii) The Size of the Unit; and (iv) The percentage of undivided ownership interest in the Common Areas which is appurtenant to the Unit.

4. Computation of Undivided Interests. The percentage of undivided ownership interest in the Common Areas and Facilities which is appurtenant to a Unit shall be equal to the ratio between the Size of such Unit and the aggregate Size of all Units included in the Project. In determining the percentage of undivided ownership interest which is appurtenant to each Unit contained in the Project, Declarant may have made minor adjustments in some or all of the percentage interests which result from a strict application of the formula described at the immediately foregoing sentence for the purpose, but only for the purpose, of assuring that the total undivided ownership interest respecting the Project equals 100.00%. The percentages of undivided ownership interest in the Common Areas which are appurtenant to the Units and which are set forth on Exhibit "A" have been computed in the aforesaid manner.

5. Limited Common Areas. The Limited Common Areas and Facilities which are contained in the Project consist of all of the following which are labelled as such on the Survey Map: (i) All patios, porches, balconies, decks, and private yard areas, if any, attached or adjacent to a Unit; and (ii) The numbered carport designated for the use of an individual Unit on the Survey Map. The exclusive use of each patio, porch, balcony, deck, private yard area, or carport is reserved to the Unit which it adjoins, with which it is associated, or as designated on the Survey Map.

6. Conveyancing. Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering a Condominium

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Unit shall describe the interest or estate involved substantially as follows:

Unit No. _____ contained within the Countryside Condominium Project as the same is identified in the Record of Survey Map recorded in Salt Lake County, Utah, as Entry No. _____ (as said Record of Survey Map may have heretofore been amended or supplemented) and in the Declaration of Condominium of the Countryside Condominium Project recorded in Salt Lake County, Utah, as Entry No. _____ in Book _____ at Page _____ (as said Declaration may have heretofore been amended or supplemented). TOGETHER WITH the undivided ownership interest in said Project's Common Areas and Facilities which is appurtenant to said Unit as more particularly described in said Declaration.

Whether or not the description employed in any such instrument is in the above-specified form, however, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Unit. Neither the percentage of undivided ownership interest in the Common Areas and Facilities nor the right of exclusive use of a Limited Common Area and Facility shall be separated from the Unit to which it appertains; and, even though not specifically mentioned in the instrument of transfer, such percentage of undivided ownership interest and such right of exclusive use shall automatically accompany the transfer of the Unit to which they relate.

7. Permissible Uses. All Units are intended to be used for residential housing and are restricted to such use. No Unit shall be used, occupied, or altered in violation of law, so as to detract from the appearance or value of any other Unit, so as to create a nuisance or to interfere with the rights of any Unit Owner, or in a way which would result in an increase in the cost of any insurance covering the Project as a whole. Without limiting the breadth of the foregoing sentence: aluminum foil, newspapers, or any other similar materials may not be used to cover the windows in any Unit. The Common Areas and Facilities shall be used only in a manner which is consistent with their community nature and with the use restrictions applicable to the Units. Without limiting the breadth of the foregoing sentence: (i) No automobile or other vehicle shall be parked in front of a carport, in front of a walkway, or at any location within the Project which impairs or tends to impair vehicular or pedestrian access within the Project or to and from its various parts; (ii) No radio or television antenna or any wiring for any purpose may be installed on the exterior of any Building without the prior written approval of the Management Committee; (iii) No sign, advertisement, notice, or other lettering shall be exhibited, inscribed, painted, or fixed by any Owner at any location within the Common Areas or at any location within each Unit visible from the Common Areas without the prior written consent of the Management Committee; (iv) No sidewalk, entrance,

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passage, vestibule, stairway, corridor, or hall, comprising a part of the Common Areas (other than Limited Common Areas), may be obstructed or encumbered or used for any purpose other than ingress and egress to and from Units; (v) No garments, rugs, other household items, or wash lines of any kind may be hung, erected, or maintained outside of an Owner's Unit; (vi) No Unit Owner shall discard or permit to fall any items from the windows of his Unit; and (vii) No articles belonging to Owners shall be kept within or upon Common Areas (other than Limited Common Areas associated with his Unit). No leases, charges for use, rental agreements, licenses, or similar arrangements shall be employed or entered into with respect to any portion of the Common Areas and Facilities; provided, however, that the Association shall establish and collect a monthly use fee to be charged to each Unit Owner who utilizes a recreational vehicle parking space in the recreational vehicle parking area shown on the Record of Survey Map. Such monthly use fee shall be established and maintained at a level commensurate with the charges of commercial lessors of such spaces in the locality, but shall in no event be less than a level that will defray all costs and expenses of the Association in any way connected with or related to the operation or ownership of such recreational vehicle parking area. The fees so collected shall be used to defray a portion of the Common Expenses. Each Unit Owner who utilizes the recreational vehicle parking area shall bear full responsibility for any loss or damage to his vehicle while parked or stored in said area, and the Association shall not be liable for any such loss or damage. The monthly use fee provided for in this Section shall be, constitute, and remain a continuing lien upon the Unit of the Owner using the recreational vehicle parking space for which such fee is charged. The provisions of Section 24 of this Article III shall apply to collection of such monthly use fee. No animals other than small household pets in reasonable numbers shall be kept or allowed in any part of the Project. The foregoing sentence shall be deemed to prohibit, inter alia, the keeping of any dog weighing more than twenty (20) pounds and the keeping in any Unit of more than two dogs and/or cats. Whenever a pet is allowed to leave a Unit, it shall be on a leash or in a cage.

8. Declarant's Sales Program. Notwithstanding the provisions of the foregoing Section 7, until the happening of the event described in the second Paragraph of this Section 8, Declarant shall have the following rights in furtherance of any sales, promotional, or other activities designed to accomplish or facilitate the sale of all Units owned or to be owned by Declarant:

(i) Declarant shall have the right to maintain eight (8) or less sales offices and/or model Units. Such offices and/or model Units may be one or more Units (of any floor area and at any location) owned by it, one or more separate structures or facilities placed on the Tract for the purpose of aiding Declarant's sales efforts, or any combination of the foregoing. If one or more separate structures or facilities is so employed by Declarant, each shall be reasonably located given the layout of the Project, and each shall have an aggregate floor area not

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substantially in excess of twice the aggregate floor area of the largest Unit contained in the Project.

(ii) Declarant shall have the right to maintain a reasonable number of promotional, advertising, and/or directional signs, banners, or similar devices at any place or places on the Tract, but any such device shall be of a size and in a location as is reasonable and customary.

Declarant shall have the right from time to time to locate or relocate any of its sales offices, model Units, and/or signs, banners, or similar devices, but in connection with each such location or relocation shall observe the limitations imposed by the preceding portion of this Section. Within a reasonable period of time after the happening of the event described in the second Paragraph of this Section 8, Declarant shall have the right to remove from the Project any signs, banners, or similar devices and any separate structure or facility which were placed on a portion of the Tract for the purpose of aiding Declarant's sales effort.

The event referred to in the first Paragraph of this Section 8 shall be the first to occur of the following:

(a) Declarant ceases to be a Unit Owner; or

(b) The expiration of seven (7) years after the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah.

9. Completion Obligation. Declarant hereby covenants in favor of each person who contracts with Declarant for the purchase of a Unit located or to be located on any portion of the Tract that no later than eighteen (18) months after the date on which such contract is entered into: (i) The Unit which such person has contracted to purchase, the Building within which such Unit is contained or is to be contained, and each Limited Common Area appurtenant to such Unit shall be fully constructed and ready for use or occupancy (as the case may be); and (ii) There shall be substantially completed and usable as part of the Common Areas all proposed or planned roadways, parking spaces, sidewalks, fences, outdoor lighting, landscaping, and utility lines and conduits necessary to enable full use and enjoyment of the Unit concerned.

10. Condition and Maintenance of Units and Limited Common Areas. Each Unit, and all utility facilities, lines, ducts, and other such apparatus serving solely such Unit, and located within the boundary of such Unit shall be maintained by the Owner thereof so as not to detract from the appearance of the Project and so as not to affect adversely the value or use of any other Unit or other portions of the Project. Each Unit Owner shall keep his appurtenant patio(s), porch(es), balcony(s), deck(s), and/or private yard areas, if any, in a clean and orderly condition, but shall not otherwise maintain the same.

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The Committee shall have no obligation regarding maintenance or care which is required to be accomplished by the Owners.

11. Encroachments. In the event that any portion of the Common Areas, a Limited Common Area, a Unit, and/or a Building (whether constructed by Declarant or reconstructed so as to substantially duplicate a Unit or Building originally constructed by Declarant) encroaches or comes to encroach on the Common Areas, another Limited Common Area, another Unit, and/or another Building, as a result of construction, reconstruction, repair, shifting, settlement, or movement, an easement for such encroachment is created hereby and shall exist so long as such encroachment exists.

12. Status and General Authority of Committee. The Condominium Project shall be managed, operated, and maintained by the Management Committee on behalf of the Unit Owners. The Committee shall, in connection with its exercise of any of the powers delineated in subparagraphs (a) through (j) below, constitute a legal entity capable of dealing in its Committee name. The Management Committee shall have, and is hereby granted, the following authority and powers:

(a) The power and authority to enter upon any Condominium Unit to make emergency repairs and to do other work reasonably necessary for the proper maintenance and operation of the Project.

(b) The authority, without the vote or consent of the Unit Owners, Mortgagees, insurers or guarantors of Mortgages, or of any other person(s), to grant or create, on such terms as it deems advisable, reasonable permits, licenses, and easements over, under, across, and through the Common Areas and Facilities for utilities, roads, and other purposes reasonably necessary or useful for the proper maintenance and operation of the Project.

(c) The authority to execute and record, on behalf of all the Unit Owners, any amendment to the Declaration or Record of Survey Map which has been approved by the vote or consent necessary to authorize such amendment.

(d) The power to sue and be sued.

(e) The authority to enter into contracts which in any way concern the Project, so long as any vote or consent necessitated by the subject matter of the agreement has been obtained.

(f) The power and authority to convey or transfer any interest in real property, so long as any vote or consent necessary under the circumstances has been obtained.

(g) The power and authority to purchase, otherwise acquire, and accept title to, any interest in

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real property, so long as such action has been authorized by any vote or consent which is necessary under the circumstances.

(t) The power and authority to add any interest in real property obtained pursuant to subparagraph (g) above to the Condominium Project, so long as such action has been authorized by the necessary vote or consent.

(i) The authority to promulgate such reasonable rules, regulations, and procedures as may be necessary or desirable to aid the Committee in carrying out any of its functions or to insure that the Project is maintained and used in a manner consistent with the interests of the Unit Owners.

(j) The power and authority to perform any other acts and to enter into any other transactions which may be reasonably necessary for the Management Committee to perform its functions on behalf of the Unit Owners.

Any instrument executed by the Management Committee that recites facts which, if true, would establish the Committee's power and authority to accomplish through such instrument what is purported to be accomplished thereby shall conclusively establish said power and authority in favor of any person who in good faith and for value relies upon said instrument.

13. Professional Management. Unless approval for self-management is obtained pursuant to Paragraph (c) of Section 37 of this Article III, the Committee shall carry out through a professional manager those of its functions which are properly the subject of delegation. The professional manager so engaged shall be an independent contractor and not an agent or employee of the Committee, shall be responsible for managing the Project for the benefit of the Committee and the Unit Owners, and shall, to the extent permitted by law and by the terms of the agreement with the Committee, be authorized to perform any of the functions or acts required or permitted to be performed by the Management Committee itself. Any such management agreement entered into prior to the happening of the event described in the second Paragraph of Section 14 of this Article III shall provide that: either party, with or without cause and without payment of any termination fee or being subject to any penalty, may terminate same upon not in excess of ninety (90) days written notice to the other party thereto.

14. Composition of Management Committee. The Committee shall be composed of five members. At the first regular Owners meeting, three Committee members shall be elected for two-year terms and two members for one-year terms. At each annual Owners meeting thereafter, any vacant seat on the Committee shall be filled with a member elected for a two-year term. Only Unit Owners and officers and agents of Owners other than individuals shall be eligible for Committee membership. At each annual meeting, the percentage of undivided ownership

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interest appurtenant to a Unit may be voted in favor of as many candidates for Committee membership as there are seats on the Committee to be filled; provided, however, that until the happening of the event described in the second Paragraph of this Section 14, Declarant alone shall be entitled to select four of the five Committee members. Notwithstanding the foregoing provisions, until the first annual meeting of the Owners the members of the Committee, although numbering less than five, shall be the following persons and each shall hold the office(s) indicated opposite his name:

Larry Siglin
Rick Lloyd

President
Secretary-Treasurer

Any Committee member who fails on three successive occasions to attend Committee meetings (whether regular or special) or who has failed to attend at least twenty-five percent (25%) of all Committee meetings (whether regular or special) held during any 12-month period shall automatically forfeit his seat. In the event a Committee seat which was filled by Declarant becomes vacant prior to the happening of the event described in the second Paragraph of this Section 14, whether by reason of forfeiture or due to another cause, Declarant shall select a replacement member to sit on the Committee for the balance of the term associated with the vacated seat. In all other cases of vacancy, the remaining Committee members shall elect a replacement to sit on the Committee until the expiration of the term for which the member being replaced was elected. Unless he forfeits or otherwise loses his seat as herein provided, a member shall serve on the Committee until his successor is elected and qualifies. Committee members shall be reimbursed for all expenses reasonably incurred in connection with Committee business. The Committee may fix such compensation for any member as may be reasonable in light of the Committee duties which that member is required to perform.

The event referred to in the first Paragraph of this Section 14 shall be the first to occur of the following:

(a) Declarant has conveyed to purchasers seventy-five percent (75%) of the Condominium Units included in the Project; or

(b) The expiration of three (3) years after the date on which the first Condominium Unit is conveyed by Declarant to a purchaser.

15. Committee Officers and Agents. The Committee shall perform its functions through those members who are elected as officers by the Committee and through such agents or employees as the Committee may appoint. Any Committee officer, agent, or employee may at any time be removed with or without cause by the vote of a majority of the Committee members. The officers of the Committee, and their respective powers and functions, shall be as follows:

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(a) President. The President shall be the chief executive of the Committee and shall exercise general supervision over the property and affairs of the Project. He shall preside over all meetings of the Committee and of the Unit Owners. He shall execute all instruments on behalf of the Committee.

(b) Vice-President. The Vice-President shall have all the powers of the President in the event of the latter's absence or inability to act.

(c) Secretary. The Secretary shall keep minutes of meetings of the Committee and of the Unit Owners and shall keep all records which are required or made necessary by the Act, this Declaration, or the Committee.

(d) Treasurer. The Treasurer shall have custody and control of the funds available to the Committee. If the Project comes to contain fifty (50) or more Units, the Treasurer shall cause to be prepared an annual audited financial statement for each fiscal year of Project operation. Upon request of the Committee he shall furnish it with a bond, in the amount specified by the Committee, conditioned upon the faithful performance of his duties. The offices of Secretary and Treasurer or of Vice-President and Treasurer may be held by the same Committee member.

16. Committee Meetings. A regular meeting of the Committee shall be held immediately after the adjournment of each annual Owners meeting. Other regular meetings shall be held at periodic intervals at such time and place as the Committee may provide. No notice need be given of regular Committee meetings. Special Committee meetings shall be held whenever called by the President or by any two members of the Committee. Reasonable effort shall be made to give either oral or written notice of a special meeting to each Committee member at least twenty-four (24) hours before the time fixed for the meeting. Adequate notice of a special meeting shall be deemed to have been given to a member if such effort is made, even though the member concerned does not actually receive notice. The propriety of holding any meeting which is attended by all Committee members may not be challenged on grounds of inadequate notice. A quorum for the transaction of business at any Committee meeting shall consist of a majority of all the members then in office.

17. Owners Meetings. The annual meeting of the Unit Owners shall be held at 7:00 p.m. on the second Monday in September 1983 and on the second Monday in September of each succeeding year. Whenever such day is a legal holiday, the meeting shall occur on the first business day thereafter. The place of meeting shall be at a location in Salt Lake County, Utah, specified in the notice of meeting. At least ten (10) but not more than thirty (30) days before the date of the annual meeting, a written notice thereof shall be personally delivered or mailed postage prepaid to each person who appears as an Owner, at the latest address for such person appearing, in the records

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of the Committee at the time of delivery or mailing. Such notice shall state the time, place, and general purpose of the meeting.

Special meetings of the Owners may be called by the President, by any two members of the Committee, or by Unit Owners cumulatively holding at least one-fourth (1/4) of the undivided ownership interest in the Project. At least two (2) but not more than thirty (30) days before the date set for a special meeting, written notice thereof shall be given in the manner described in the immediately preceding Paragraph.

No notice of any Owners meeting shall be required if a waiver of such notice is signed by all of the Owners. Whenever all the Owners meet in person or by proxy, such meeting may not be challenged on grounds of inadequate notice. The presence of Owners entitled to cast a majority of all the undivided ownership interest in the Project shall constitute a quorum for the transaction of business at any Owners meeting. In the event a quorum is not present at any Owners meeting, whether regular or special, the meeting may be adjourned and rescheduled for a time no earlier than forty-eight (48) hours, and no later than thirty (30) days, after the time set for the original meeting. No notice of such rescheduled meeting shall be required. The presence of Owners entitled to cast twenty-five percent (25%) of all the undivided ownership interest in the Project shall constitute a quorum at the rescheduled meeting. Notwithstanding the foregoing provisions of this Paragraph, however, in any case in which the Act or this Declaration requires the affirmative vote of at least a specified percentage of the Project's undivided ownership interest for authorization or approval of a matter, the presence of Owners entitled to cast that percentage shall be necessary to constitute a quorum at any meeting (whether original or rescheduled) at which action on such matter is taken.

18. Voting -- Multiple Ownership. The vote attributable to and exercisable in connection with a Unit shall be the percentage of undivided ownership interest which is then appurtenant thereto. In the event there is more than one Owner of a particular Unit, the vote relating to such Unit shall be exercised as such Owners may determine among themselves. A vote cast at any meeting by any of such Owners shall be conclusively presumed to be the vote attributable to the Unit concerned unless an objection is immediately made by another Owner of the same Unit. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.

19. Lists of Unit Owners, Eligible Mortgagees, and Eligible Insurers or Guarantors. The Committee shall maintain up-to-date records showing: (i) the name of each person who is an Owner, the address of such person, and the Unit which is owned by him; (ii) the name of each person or entity who is an Eligible Mortgagee, the address of such person or entity, and the Unit which is encumbered by the Mortgage held by such person or entity; and (iii) the name of each person or entity who is an Eligible Insurer or Guarantor, the address of such person or entity, and the Unit which is encumbered by the Mortgage insured or guaranteed by such person or entity. In the event of any

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transfer of a fee or undivided fee interest in a Unit, either the transferor or transferee shall furnish the Committee with evidence establishing that the transfer has occurred and that the Deed or other instrument accomplishing the transfer is of record in the office of the County Recorder of Salt Lake County, Utah. The Committee may for all purposes act and rely on the information concerning Owners and Unit ownership which is thus acquired by it, or at its option, the Committee may act and rely on current ownership information respecting any Unit or Units which is obtained from the office of the County Recorder of Salt Lake County, Utah. The address of an Owner shall be deemed to be the address of the Unit owned by such person unless the Committee is otherwise advised.

20. Limitation on Improvements by Association. Until occurrence of the event described in the second Paragraph of Section 8 of this Article III, neither the Association nor the Management Committee shall, without the written consent of Declarant, make any improvement to or alteration in any of the Common Areas and Facilities other than such repairs, replacements, or similar matters as may be necessary to properly maintain the Common Areas as originally created or constructed by Declarant.

21. Capital Improvements. Additions or capital improvements to the Project which cost no more than Five Thousand Dollars (\$5,000.00) may be authorized by the Management Committee alone. Additions or capital improvements the cost of which will exceed such amount must, prior to being constructed or accomplished, be authorized by at least a majority of the undivided ownership interest in the Project. Any addition or capital improvement which would materially alter the nature of the Project must, regardless of its cost and prior to being constructed or accomplished, be authorized by at least sixty-seven percent (67%) of the Project's undivided ownership interest. All provisions of this Section 21 are subject to the limitations imposed by the foregoing Section 20.

22. Operation and Maintenance. The Management Committee shall, as a portion of the Common Expenses, pay for, or provide for the payment of, all utility services furnished to the Project which are not separately metered and billed to individual Units by the utility or other party furnishing such service. Except as otherwise provided in the balance of this Section 22 or in Section 10 of this Article III, the Committee shall provide for such maintenance and operation of the Common and Limited Common Areas and Facilities as may be reasonably necessary to make them appropriately usable in conjunction with the Units and to keep them clean, functional, attractive, and generally in good condition and repair. Without limiting the breadth of the foregoing, the Committee shall provide for necessary maintenance and cleaning of any storm water catch basin within the Project.

23. Payment of Expenses. Before August 15 of each year, the Committee shall prepare a budget which sets forth an itemization of the Common Expenses which are anticipated for the 12-month period commencing with the following: October 1. Such

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budget shall take into account any deficit or surplus realized during the current fiscal year and such sums as may be necessary to fund the reserve required under the second Paragraph of this Section. The total of such expenses shall be apportioned among all the Units on the basis of their respective appurtenant percentages of undivided ownership interest (subject, however, to the provision which appears at the end of this Paragraph). Prior to the tenth (10th) day of each month during the fiscal year covered by the budget, each Unit Owner shall pay to the Committee as his share of the Common Expenses one-twelfth (1/12) of the amount so apportioned to his Unit. If the aggregate of monthly payments attributable to all of the Units is too large or too small as a result of unanticipated income or expenses or as a result of a Unit's being occupied for the first time or title thereto no longer being vested in Declarant (as hereinafter provided), the Committee may from time to time effect an equitable change in the amount of said payments. The dates and manner of payment shall be determined by the Committee. The foregoing method of assessing the Common Expenses to the Units shall commence when Declarant conveys the first Unit to a purchaser and may be altered by the Committee thereafter so long as the method it adopts is consistent with good accounting practice and requires that the portion of Common Expenses borne by each Unit during a 12-month period be determined on the basis of its appurtenant undivided ownership interest as set forth in this Declaration; provided, however, that the share of Common Expenses required to be borne by a Unit shall be sixty percent (60%) of the amount otherwise applicable until the earlier of the following has occurred: (i) Title to such Unit is no longer vested in Declarant or such Unit is occupied for the first time for residential purposes following recordation of this Declaration, whichever first occurs; and (ii) The expiration of a sixty (60) day period commencing on the date Declarant conveys the first Unit to a purchaser.

The Committee shall establish and maintain an adequate reserve fund for the periodic maintenance, repair, and replacement of the Common Areas and Facilities and those Limited Common Areas which the Committee is obligated to maintain. As provided in the immediately foregoing Paragraph, such fund shall be maintained out of regular monthly payments of Common Expenses. Such fund shall be maintained in a reasonably liquid, interest bearing investment or account as determined by the Management Committee.

24. Remedies for Nonpayment. Should any Unit Owner fail to pay when due his share of the Common Expenses, the Unit Owner shall pay a ten dollar (\$10.00) late fee and the delinquent payment shall bear interest at the rate of the higher of eighteen percent (18%) per annum or the prime rate then being charged by First Security Bank of Utah on the date such payment became delinquent. The Committee may enforce any remedy provided in the Act or otherwise available for collection of delinquent Common Expense assessments. Regardless of the terms of any agreement to the contrary, liability for the payment of Common Expense assessments shall be joint and several, and any remedy for the collection of such assessments may be enforced against any Owner of the Unit concerned or against the Unit itself. The personal

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obligation of an Owner to pay his share of the Common Expenses shall not pass to successors in title unless assumed by them. Any relief obtained, whether or not through foreclosure proceedings, shall include the Committee's costs and expenses and reasonable attorneys' fees. In the event of foreclosure, after institution of the action the Committee shall, without regard to the value of the Unit or the extent of the Owner's equity therein, be entitled to the appointment of a receiver to collect any income or rentals which may be produced by the Unit concerned.

25. Management Committee Liability. No member of the Management Committee shall be liable to the Unit Owners for any mistake of judgment, for negligence, or on other grounds, except for such member's own individual and willful misconduct or bad faith. The Unit Owners shall indemnify and hold harmless each member of the Management Committee from and against all liability to third parties arising out of any contract made by the Management Committee on behalf of the Owners, unless such contract was made in bad faith or contrary to the provisions of the Act or this Declaration. The liability of any Unit Owner arising out of any contract made by the Management Committee or out of the indemnification provision set forth in the foregoing portion of this Section 25 shall be limited to the total liability concerned multiplied by such Owner's undivided ownership interest in the Common Areas.

26. Hazard Insurance. The Management Committee of Association of Unit Owners shall at all times maintain in force, and pay the premiums for, hazard insurance meeting the following requirements:

(i) A "master" or "blanket" type policy of property insurance shall be maintained covering the entire Project, including: Common Areas and Facilities; Limited Common Areas; Units; fixtures, building service equipment, personal property, and supplies comprising a part of the Common Areas and Facilities or owned by the Management Committee or the Owners Association; and fixtures, equipment, or other property comprising a part of or located within any Unit and which are of a class typically encumbered by Mortgages held by the Federal National Mortgage Association (hereinafter, "FNMA") or other similar institutional Mortgage investors; but excluding land, foundations, excavation, and other items normally not covered by such policies. References herein to a "master" or "blanket" type policy of property insurance are intended to denote single entity condominium insurance coverage. As a minimum, such "master" or "blanket" policy shall afford protection against loss or damage by fire, by other perils normally covered by the standard extended coverage endorsement, and by all other perils which are customarily covered with respect to condominium projects similar to the Project in construction, location, and use, including (without limitation) all perils normally covered by the standard "all risk" endorsement, where such endorsement is

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available. Such "master" or "blanket" policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all elements of the Project covered by such policy, exclusive of land, foundations, excavation, and other items normally excluded from coverage.

(ii) If a steam boiler is or comes to be in operation in the Project, there shall be maintained a policy of insurance providing coverage against loss or damage resulting from steam boiler equipment accidents in an amount not less than One Hundred Thousand Dollars (\$100,000.00) per accident per location or such greater amount as deemed prudent based on the nature of the Project.

(iii) If the Project is or comes to be situated in an area having special flood hazards and for which flood insurance has been made available under the National Flood Insurance Program ("NFIP"), a "master" or "blanket" policy of flood insurance shall be maintained covering the Buildings and any other property covered by the required form of policy (hereinafter, "Insurable Property") in an amount deemed appropriate, but not less than the lesser of: (1) the maximum limit of coverage available under NFIP for all Buildings and Insurable Property within any portion of the Project located within a designated flood hazard area; or (2) one hundred percent (100%) of current replacement cost of all such Buildings and Insurable Property. Such policy shall be in a form which meets the criteria set forth in the most current Guidelines on the subject issued by the Federal Insurance Administrator.

(iv) The name of the insured under each policy required to be maintained by the foregoing items (i), (ii), and (iii) shall be set forth therein substantially as follows: "Association of Unit Owners of the Countryside Condominium Project for the use and benefit of the individual Owners." [Said Owners shall be designated by name, if required.] Notwithstanding the requirement of the two immediately foregoing sentences, each such policy may be issued in the name of an authorized representative of the Association, including any Insurance Trustee with whom the Association has entered into an Insurance Trust Agreement, or any successor to such Trustee, for the use and benefit of the individual Unit Owners. Loss payable shall be in favor of the Owners Association (or Insurance Trustee), as a trustee for each Unit Owner and each such Owner's Mortgagee. Each Unit Owner and each such Owner's Mortgagee, if any, shall be beneficiaries of such policy in the percentage of such Owner's undivided ownership interest in the Common Areas and Facilities. Evidence of insurance shall be issued to each Unit Owner and Mortgagee upon request.

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(v) Each policy required to be maintained by the foregoing items (i), (ii), and (iii) shall contain the standard mortgage clause, or equivalent endorsement (without contribution), commonly accepted by private institutional Mortgage investors in the area in which the Project is located. If FVMA is a holder of one or more Mortgages on Condominium Units within the Project, such mortgage clause shall name FVMA or FVMA's servicer of such Mortgages as Mortgagee. If FVMA's servicer is named as Mortgagee in such mortgage clause, such servicer's name shall be followed therein by the phrase "its successors and assigns." In addition, such mortgage clause or another appropriate provision of each such policy shall provide that the policy may not be cancelled or substantially modified without at least ten (10) days' prior written notice to the Association and to each Mortgagee which is listed as a scheduled holder of a Mortgage in the policy.

(vi) Each policy required to be maintained by the foregoing items (i), (ii), and (iii) shall provide for the following: recognition of any insurance trust agreement; a waiver of the right of subrogation against Unit Owners individually; the insurance is not prejudiced by any act or neglect of individual Unit Owners which is not in the control of such Unit Owners collectively; and the policy is primary in the event the Unit Owner has other insurance covering the same loss. The requirements stated in this item (vi) are generally provided by the insurer in the form of a "Special Condominium Endorsement" or its equivalent.

(vii) Each policy required to be maintained by the foregoing items (i), (ii), and (iii) shall also contain or provide the following: (1) an "Agreed Amount and Inflation Guard Endorsement," if available; and (2) "Construction Code Endorsements" (such as a "Demolition Cost Endorsement," a "Contingent Liability from Operation of Building Laws Endorsement," and an "Increased Cost of Construction Endorsement"), if the Project is subject to a construction code provision which would become operative upon Partial or Substantial Destruction and require changes to undamaged portions of the Building(s), thereby imposing significant costs in the event of such Destruction of the Project by an insured peril.

27. Fidelity Bonds. The Management Committee or the Association of Unit Owners shall at all times maintain in force and pay the premiums for "blanket" fidelity bonds for all officers, members, and employees of the Committee and the Association and for all other persons handling or responsible for funds of or administered by the Committee or the Association. Furthermore, where the Committee or the Association has delegated some or all of the responsibility for the handling of funds to a management agent, such bonds are required for the management agent's officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Committee or the

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Association. The total amount of fidelity bond coverage required shall be based upon best business judgment and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Committee, the Association, or the management agent, as the case may be, at any given time during the term of each bond. Nevertheless, in no event may the amount of such bonds be less than a sum equal to three months' aggregate assessments on all Condominium Units plus reserve funds. The bonds required shall meet the following additional requirements: (1) the fidelity bonds shall name the Committee and the Owners Association as obligees; (2) the bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees," or similar terms or expressions; (3) the premiums on all bonds required herein for the Committee and the Association (except for premiums on fidelity bonds maintained by a management agent for its officers, employees and agents) shall be paid by the Committee or the Association as part of the Common Expenses; and (4) the bonds shall provide that they may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least ten (10) days' prior written notice to the Committee and the Association, to any Insurance Trustee, and to each servicer of loans on behalf of FHMA.

28. Liability Insurance. The Management Committee or Association of Unit Owners shall maintain in force and pay the premium for a policy providing comprehensive general liability insurance coverage covering all of the Common Areas and Facilities, public ways in the Project, if any, and commercial spaces owned by the Association, if any, whether or not such spaces are leased to some third party. The coverage limits under such policy shall be in amounts generally required by private institutional Mortgage investors for condominium projects similar to the Project in construction, location, and use. Nevertheless, such coverage shall be for at least One Million Dollars (\$1,000,000.00) for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Coverage under such policy shall include, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance, or use of the Common Areas and Facilities, and legal liability arising out of lawsuits related to employment contracts of the Committee or the Association. Additional coverages under such policy shall include protection against such other risks as are customarily covered with respect to condominium projects similar to the Project in construction, location, and use, including but not limited to, host liquor liability, contractual and all-written contract insurance, employers liability insurance, and comprehensive automobile liability insurance. Such policy shall provide that it may not be cancelled or substantially modified, by any party, without at least ten (10) days' prior written notice to the Association and to each Mortgagee which is listed as a scheduled holder of a Mortgage in such policy.

29. Insurance Trustees and General Requirements Concerning Insurance. Notwithstanding any of the foregoing provisions and requirements relating to property or liability

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insurance, there may be named as an insured, on behalf of the Committee and the Association, the Association's authorized representative, including any trustee with whom the Committee and the Association may enter into any Insurance Trust Agreement or any successor to such trustee (each of whom shall be referred to herein as the "Insurance Trustee"), who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance. Each Unit Owner hereby appoints the Committee, or any Insurance Trustee or substitute Insurance Trustee designated by the Committee, as his or her attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Committee, or any Insurance Trustee, shall receive, hold, or otherwise properly dispose of any proceeds of insurance in trust for Unit Owners and their mortgagees as their interests may appear.

Each insurance policy maintained pursuant to the foregoing Sections 26, 27, and 28 shall be written by an insurance carrier which is licensed to transact business in the State of Utah and which has a financial rating by Best's Key Rating Guide of Class VI or better. No such policy shall be maintained where: (i) under the terms of the carrier's charter, bylaws, or policy, contributions may be required from, or assessments may be made against, a Unit Owner, a borrower, a Mortgagee, the Management Committee, the Association of Unit Owners, FHMA, or the designee of FHMA; (ii) by the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders, or members; or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent the party entitled (including, without limitation, the Committee, the Association, a Unit Owner, FHMA, or the borrowers) from collecting insurance proceeds. The provisions of this Section 29 and of the foregoing Sections 26, 27, and 28 shall not be construed to limit the power or authority of the Management Committee or Association of Unit Owners to obtain and maintain insurance coverage, in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Management Committee or Association may deem appropriate from time to time.

30. Destruction, Condemnation, and Obsolescence. The provisions of this Section 30 and of the following Sections 31 through 34 shall apply with respect to the destruction, condemnation, or obsolescence of the Project. As used in such Sections each of the following terms shall have the meaning indicated:

(a) **Destruction.** "Substantial Destruction" shall exist whenever, as a result of any damage or destruction to the Project or any part thereof, the excess of Estimated Costs of Restoration over Available Funds is twenty-five percent (25%) or more of the estimated Restored Value of the Project. "Partial Destruction" shall mean any other damage or destruction to the Project or any part thereof.

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(b) Condemnation. "Substantial Condemnation" shall exist whenever a complete taking of the Project or a taking of part of the Project has occurred under eminent domain or by grant or conveyance in lieu of condemnation, and the excess of the Estimated Costs of Restoration over Available Funds is twenty-five percent (25%) or more of the estimated Restored Value of the Project. "Partial Condemnation" shall mean any other such taking by eminent domain or grant or conveyance in lieu thereof.

(c) Obsolescence. "Substantial Obsolescence" shall exist whenever the Project or any part thereof has reached such a state of obsolescence or disrepair that the excess of Estimated Costs of Restoration over Available Funds is twenty-five percent (25%) or more of the estimated Restored Value of the Project. "Partial Obsolescence" shall mean any state of obsolescence or disrepair which does not constitute Substantial Obsolescence.

(d) Restoration. "Restoration" shall mean restoration of the Project, to the extent reasonably possible, in accordance with the Declaration, the Survey Map, and the original plans and specification for the Project and to a condition the same or substantially the same as the condition in which the Project existed prior to the damage or destruction concerned; and to the extent not so possible, "Restoration" shall mean restoration of the Project to an attractive, sound, and desirable condition. Any "Restoration" not in accordance with the Declaration, the Survey Map, and the original plans and specifications for the Project shall require the consent of Eligible Mortgagees holding Mortgages on Condominium Units which have appurtenant at least fifty-one percent (51%) of the undivided ownership interest in the Common Areas and Facilities which is then subject to Mortgages held by Eligible Mortgagees.

(e) Restored Value. "Restored Value" shall mean the value of the Project after Restoration.

(f) Estimated Costs of Restoration. "Estimated Costs of Restoration" shall mean the estimated costs of Restoration.

(g) Available Funds. "Available Funds" shall mean any proceeds of insurance, condemnation awards, payments in lieu of condemnation, and any uncommitted funds of the Management Committee or Association, including amounts contained in any reserve or contingency fund. Available Funds shall not include that portion of insurance proceeds legally required to be paid to any party other than the Association, including a Mortgagee, or that portion of any condemnation award or payment in lieu of condemnation payable to the Owner or Mortgagee of a Condominium Unit

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for the condemnation or taking of the Unit in which they are interested.

31. Determination by Committee. Upon the occurrence of any damage or destruction to the Project or any part thereof, or upon a complete or partial taking of the Project under eminent domain or by grant or conveyance in lieu thereof, the Committee shall make a determination as to whether the excess of Estimated Costs of Restoration over Available Funds is twenty-five percent (25%) or more of the estimated Restored Value of the Project. In addition, the Committee shall, from time to time, review the condition of the Project to determine whether Substantial Obsolescence exists. In making such determinations the Committee may retain and rely upon one or more qualified appraisers or other professionals.

32. Restoration of Project. Restoration of the Project shall be undertaken by the Committee promptly without a vote of the Owners in the event of Partial Destruction, Partial Condemnation, or Partial Obsolescence and shall also be undertaken in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence unless the failure to make Restoration is consented to by Owners collectively holding at least sixty-seven percent (67%) of the Project's undivided ownership interest and is further consented to by Eligible Mortgagees holding Mortgages on Condominium Units which have appurtenant at least fifty-one percent (51%) of the undivided ownership interest in the Common Areas and Facilities which is then subject to Mortgages held by Eligible Mortgagees. Within thirty (30) days after the Committee has determined that Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence exists, it shall send to each Owner and Eligible Mortgagee a written description of the destruction, condemnation, or state of obsolescence involved, shall take appropriate steps to ascertain the preferences of the Eligible Mortgagees concerning Restoration, and shall, with or without a meeting of the Owners (but in any event in accordance with the applicable provisions of this Declaration), take appropriate steps to determine the preferences of the Owners regarding Restoration. In the event insurance proceeds, condemnation awards, or payments in lieu of condemnation actually received by the Committee or Association exceed the cost of Restoration when Restoration is undertaken, the excess shall be paid and distributed to the Owners in proportion to their respective undivided interests in the Common Areas. Payment to any Owner whose Condominium Unit is the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee. In the event the cost of Restoration exceeds Available Funds, all of the Units shall be assessed for the deficiency on the basis of their respective percentages of undivided ownership interest in the Common Areas. In the event that all or any portion of one or more Units will not be the subject of Restoration (even though the Project will continue as a condominium project) or is taken in a condemnation proceeding or pursuant to any agreement in lieu thereof, the undivided ownership interest in the Common Areas and Facilities shall be immediately reallocated to the remaining Units in accordance with the method set forth in Section 4 of this Article III.

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33. Sale of Project. Unless Restoration is accomplished in accordance with the foregoing Section 32, the Project shall be sold in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence. In the event of such sale, condominium ownership under this Declaration and the Survey Map shall terminate and the proceeds of sale and any Available Funds shall be distributed by the Committee to the Owners in proportion to their respective undivided interests in the Common Areas. Payment to any Owner whose Condominium Unit is then the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee.

34. Authority of Committee to Represent Owners in Condemnation or to Restore or Sell. The Committee, as attorney-in-fact for each Owner, shall represent all of the Owners and the Association in any condemnation proceeding or in negotiations, settlements, and agreements with the condemning authority for the acquisition of all or any part of the Common Areas and Facilities. The award in any condemnation proceeding and the proceeds of any settlement related thereto shall be payable to the Association for the use and benefit of the Unit Owners and their mortgagees as their interests may appear. The Committee, as attorney-in-fact for each Owner, shall have and is hereby granted full power and authority to restore or to sell the Project and each Condominium Unit therein whenever Restoration or sale, as the case may be, is undertaken as hereinabove provided. Such authority shall include the right and power to enter into any contracts, deeds, or other instruments which may be necessary or appropriate for Restoration or sale, as the case may be.

35. Consent in Lieu of Vote. In any case in which the Act or this Declaration requires the vote of a stated percentage of the Project's undivided ownership interest for authorization or approval of an act or a transaction, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Unit Owners who collectively hold at least the stated percentage of undivided ownership interest. The following additional provisions shall govern any application of this Section 35:

(a) All necessary consents must be obtained prior to the expiration of ninety (90) days after the first consent is given by any Owner.

(b) Any change in ownership of a Condominium Unit which occurs after consent has been obtained from the Owner having an interest therein shall not be considered or taken into account for any purpose.

(c) Unless the consent of all Owners having an interest in the same Unit is secured, the consent of none of such Owners shall be effective.

36. Mortgagee Protection. The lien or claim against a Condominium Unit for unpaid assessments or charges levied by the Management Committee or by the Association of Unit Owners pursuant to this Declaration or the Act shall be subordinate to any Mortgage recorded on or before the date such assessments or

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charges become due. In the event that the State of Utah should enact the Uniform Condominium Act or any other statute applicable to condominiums with a provision that would allow such assessments or charges, including special assessments, to have a limited priority over a Mortgage recorded before such assessments or charges became due, or in the event that the State of Utah should enact any law which would allow a lien for unpaid assessments or charges to survive foreclosure or exercise of a power of sale, all such assessments and charges, including special assessments, shall after the date of such enactment be made due and payable to the Committee or the Association on a monthly basis and the lien for any fees, late charges, fines, or interest that may be levied by the Committee or the Association in connection with such unpaid assessments or charges shall be deemed subordinate to the Mortgage on the Condominium Unit upon which such assessments or charges are levied.

The lien or claim against a Condominium Unit for such unpaid assessments or charges shall not be affected by any sale or transfer of such Condominium Unit, except that a sale or transfer pursuant to a foreclosure of the Mortgage affecting such Unit or the exercise of a power of sale available thereunder shall extinguish a subordinate lien for such assessments or charges which became payable prior to such sale or transfer. Nevertheless, any such unpaid assessments or charges which are extinguished in accordance with the foregoing sentence may be reallocated and assessed to all Condominium Units as Common Expenses. Any such sale or transfer pursuant to a foreclosure or power of sale shall not relieve the purchaser or transferee of such Unit from liability for, nor such unit from the lien of, any assessments or charges becoming due thereafter.

The Committee or the Association shall make available to Unit Owners, to lenders, and to holders, insurers, or guarantors of any Mortgage current copies of this Declaration, the Survey Map, any rules concerning the Project, and the books, records, and financial statements of the Committee and the Association. "Available," as used in this Paragraph, shall mean available for inspection upon request during normal business hours or under other reasonable circumstances.

In the event that the Project comes to contain fifty (50) or more Condominium Units, any holder, insurer or guarantor of any Mortgage shall be entitled, upon written request, to an audited financial statement for the immediately preceding fiscal year free of charge to the party so requesting. So long as the Project contains less than fifty (50) Condominium Units, the holders of fifty-one percent (51%) or more of the Mortgages shall be entitled to have such an audited statement prepared at their expense if one is not otherwise available. Any financial statement requested pursuant to either of the immediately foregoing two sentences shall be furnished to the requesting party within a reasonable time following such request.

Until the happening of the event described in the second Paragraph of Section 14 of this Article III, any agreement for professional management of the Condominium Project and any contract or lease which is entered into by the Management

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Committee or the Association or to which the Management Committee or the Association is a party shall provide that either party, with or without cause and without payment of any termination fee or being subject to any penalty, may terminate same upon not in excess of ninety (90) days written notice to the other party thereto.

Upon written request to the Committee or the Association by the holder, insurer, or guarantor of a Mortgage (which request identifies the name and address of such holder, insurer, or guarantor and the Unit Number or address of the Unit encumbered by the Mortgage held or insured by such holder, insurer, or guarantor), such holder, insurer, or guarantor shall be deemed thereafter to be an Eligible Mortgagee or Eligible Insurer or Guarantor (as the case may be), shall be included on the appropriate lists maintained by the Association, and shall be entitled to timely written notice of any of the following:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Project or any Condominium Unit on which there is a Mortgage held, insured, or guaranteed by such Eligible Mortgagee or such Eligible Insurer or Guarantor.

(b) Any delinquency in the payment of assessments or charges owed by an Owner of a Condominium Unit subject to a Mortgage held, insured, or guaranteed by such Eligible Mortgagee or such Eligible Insurer or Guarantor, which delinquency remains uncured for a period of sixty (60) days.

(c) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Committee or the Association.

(d) Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees as specified in Sections 30, 32, and 37 of this Article III.

The right of a Unit Owner to sell, transfer, or otherwise convey his or her Condominium Unit shall not be subject to any right of first refusal or similar restriction.

All leases or rental agreements for Condominium Units shall be in writing and specifically subject to the provisions, restrictions, and requirements of the Declaration and Survey Map. No Condominium Unit may be leased or rented for a period of less than six (6) months. Neither the Committee nor the Association shall create or enforce any other restriction relating to the term of a lease or rental agreement of any Condominium Unit in the Project.

37. Amendment. Except as provided in and/or subject to the terms of items (a) through (c) below, the vote of at least sixty-seven percent (67%) of the undivided ownership interest in the Common Areas and Facilities shall be required and shall be sufficient to amend this Declaration or the Record of Survey Map.

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Any amendment so authorized shall be accomplished through the recordation of an instrument executed by the Management Committee. In such instrument, the Committee shall certify that the vote required by this Section for amendment has occurred, and, if approval of a specified percentage of Eligible Mortgagees is required for such amendment, that such approval has been obtained. The foregoing right of amendment shall, however, be subject to the following:

(a) Until the happening of the event described in the second Paragraph of Section 8 of this Article III, no amendment to the Survey Map or to any provision of this Declaration which has or may have the effect of diminishing or impairing any right, power, authority, privilege, protection, or control accorded to Declarant (in its capacity as Declarant) herein shall be accomplished or effective unless the instrument through which such amendment is purported to be accomplished is consented to in writing by Declarant.

(b) The consent of Eligible Mortgagees holding Mortgages on Condominium Units which have appurtenant at least sixty-seven percent (67%) of the undivided ownership interest in the Common Areas and Facilities which is then subject to Mortgages held by Eligible Mortgagees shall be required to any amendment which would terminate the legal status of the Project as a condominium.

(c) The consent of Eligible Mortgagees holding Mortgages on Condominium Units which have appurtenant at least fifty-one percent (51%) of the undivided ownership interest in the Common Areas and Facilities which is then subject to Mortgages held by Eligible Mortgagees shall be required to add to or amend any material provision of this Declaration or the Survey Map which establishes, provides for, governs, or regulates any of the following: (i) voting; (ii) assessments, assessment liens, or subordination of liens; (iii) reserves for maintenance, repair, and replacement of the Common Areas and Facilities; (iv) insurance or fidelity bonds; (v) rights to use of the Common Areas and Facilities; (vi) responsibility for maintenance and repair of the several portions of the Project; (vii) expansion or contraction of the Project or the addition, annexation, or withdrawal of property to or from the Project; (viii) the boundaries of any Unit; (ix) the interests in the Common Areas and Facilities or Limited Common Areas; (x) convertibility of Units into Common Areas or of Common Areas into Units; (xi) leasing of Condominium Units; (xii) imposition of any right of first refusal or similar restriction on the right of a Unit Owner to sell, transfer, or otherwise convey his or her Condominium Unit; (xiii) excess benefits or rights of Mortgagees, Eligible Mortgagees, or Eligible Insurers or Guaranters; and (xiv) the requirement that the Project

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be professionally managed rather than self-managed. An addition or amendment shall not be considered material for purposes of this Paragraph (c) if it is for the purpose of correcting technical errors or for clarification only. Any Eligible Mortgagee to whom a written request to approve an addition or amendment to this Declaration or the Survey Map (or to approve a decision of the Owners and/or the Committee with respect to the nature of Restoration under Section 30(d) hereof or a decision not to undertake Restoration pursuant to Section 32 hereof) is mailed postage prepaid to the address for such Mortgagee shown on the list maintained by the Association and who does not deliver to the Committee or the Association a negative response within thirty (30) days from the date of such mailing shall be deemed to have approved such request.

The consent requirements set forth in the foregoing items (b) and (c) of this Section shall not be applicable to amendments to this Declaration and the Survey Map or to termination of the legal status of the Project as a condominium if such amendments or such termination are made or accomplished in accordance with the provisions of Sections 30 through 34 of this Article III in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence.

38. Declarant's Rights Assignable. All of the rights of Declarant under this Declaration may be assigned or transferred either by operation of law or through a voluntary conveyance, transfer, or assignment.

39. Interpretation. To the extent the provisions of the Act are consistent with this Declaration, such provisions shall supplement the terms hereof and are incorporated herein. The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both other genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof.

40. Covenants to Run with Land. This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of Declarant, all other signatories hereto, all parties who hereafter acquire any interest in a Unit or in the Project, and their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. Each Owner or occupant of a Unit shall comply with, and all interests in all Condominium Units shall be subject to, the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, supplements, amendments, and determinations contemplated by this Declaration. By acquiring any interest in a Unit or in the Project, the party

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acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

41. Enforcement. Subject to the provisions of Section 25 of this Article III, the Declarant, the Management Committee, and any aggrieved Unit Owner shall have a right of action against the Declarant, the Committee, or any Unit Owner for any failure by such person or entity to comply with this Declaration, the Survey Map, or the provisions of any rules, regulations, agreements, instruments, supplements, amendments, or determinations contemplated by this Declaration.

42. Agent for Service of Process. Richard M. Lambert, whose address is 1875 Laurelwood Circle, Salt Lake City, Utah 84021, is the person to receive service of process in the cases authorized by the Act. The Management Committee shall, however, have the right to appoint a successor or substitute process agent. Such successor or substitute agent and his address shall be specified by an appropriate instrument filed in the office of the County Recorder of Salt Lake County State of Utah.

43. Effective Date. This Declaration, any amendment or supplement hereto, and any amendment or supplement to the Survey Map shall take effect upon its being filed for record in the office of the County Recorder of Salt Lake County, Utah.

EXECUTED by Declarant on this _____ day of _____, 1982.

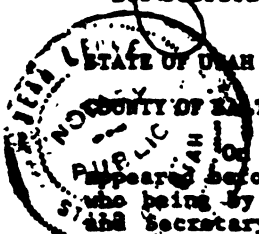
"Declarant":

HARMER-LAMBERT, INC.,
a Utah corporation

ATTEST

By [Signature]
Its Secretary

By [Signature]
Its President



On this 22nd day of August, 1982, personally appeared before me Richard M. Lambert and Thurman W. [Signature], who being by me duly sworn did say that they are the President and Secretary, respectively, of HARMER-LAMBERT, INC., a Utah corporation, that the foregoing Declaration of Condominium was signed on behalf of said corporation by authority of its Bylaws or a resolution of its Board of Directors, and said individuals

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did each acknowledge that said corporation executed the foregoing.
Declaration of Condemnation.

My commission expires:

3-29-85


NOTARY PUBLIC

Residing at:

L.L.C. Utah

100-54081-1028

EXHIBIT "A"
TO
3-DECLARATION OF CO-OWNERSHIP
OF THE COUNTRYSIDE CO-OWNERSHIP PROJECT

<u>Unit</u> <u>No.</u>	<u>Building</u> <u>No.</u>	<u>Size</u> <u>(Sq. Ft.)</u>	<u>Ownership</u> <u>Percentage</u>
1	A	1270	1.22
2	A	1240	1.20
3	A	1240	1.20
4	A	1270	1.22
5	B	1270	1.22
6	B	1240	1.20
7	B	1240	1.20
8	B	1270	1.22
9	C	1270	1.22
10	C	1240	1.20
11	C	1050	1.02
12	C	1050	1.02
13	C	920	.89
14	C	920	.89
15	C	920	.89
16	C	920	.89
17	C	1240	1.20
18	C	1270	1.22
19	F	1270	1.22
20	F	1240	1.20
21	F	1050	1.02
22	F	1050	1.02
23	F	920	.89
24	F	920	.89
25	F	920	.89
26	F	920	.89
27	F	1240	1.20
28	F	1270	1.22
29	H	1270	1.22
30	H	1240	1.20
31	H	1240	1.20
32	H	1270	1.22
33	D	1270	1.22
34	D	1240	1.20
35	D	1050	1.02
36	D	1050	1.02
37	D	920	.89
38	D	920	.89
39	D	920	.89
40	D	920	.89
41	D	1240	1.20
42	D	1270	1.22
43	G	1270	1.22
44	G	1240	1.20
45	G	1240	1.20
46	G	1240	1.20
47	G	1240	1.20
48	G	1270	1.22
49	H	1270	1.22

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<u>Unit No.</u>	<u>Building No.</u>	<u>Area (sq. ft.)</u>	<u>Ownership Percentage</u>
30	H	1240	1.20
31	H	1240	1.20
32	H	1240	1.20
33	H	1240	1.20
34	H	1270	1.22
35	H	1270	1.22
36	H	1240	1.20
37	H	1240	1.20
38	H	1270	1.22
39	H	1270	1.22
40	H	1240	1.20
41	H	1240	1.20
42	H	1270	1.22
43	H	1270	1.22
44	H	1240	1.20
45	H	1240	1.20
46	H	1270	1.22
47	H	1270	1.22
48	H	1240	1.20
49	H	1240	1.20
50	H	1240	1.20
51	H	1240	1.20
52	H	1270	1.22
53	H	1270	1.22
54	H	1240	1.20
55	H	1240	1.20
56	H	1270	1.22
57	H	1270	1.22
58	H	1240	1.20
59	H	1240	1.20
60	H	1240	1.20
61	H	1240	1.20
62	H	1270	1.22
63	H	1270	1.22
64	H	1240	1.20
65	H	1240	1.20
66	H	1270	1.22
67	H	1270	1.22
68	H	1240	1.20
69	H	1240	1.20
70	H	1240	1.20
71	H	1240	1.20
72	H	1270	1.22
73	H	1270	1.22
74	H	1240	1.20
75	H	1240	1.20
76	H	1270	1.22
77	H	1270	1.22
78	H	1240	1.20
79	H	1240	1.20
80	H	1240	1.20
81	H	1240	1.20
82	H	1270	1.22
83	H	1270	1.22
84	H	1240	1.20
85	H	1240	1.20
86	H	1270	1.22
87	H	1230	1.00
		<u>103,390</u> <u>sq. ft.</u>	<u>100.00%</u>

ms-5405 nr 2341

EXHIBIT "B"
TO
DECLARATION OF CONDOMINIUM
ON THE COUNTRYSIDE CONDOMINIUM PROJECT

The "Tract" referred to in and affected by said Declaration is situated in Salt Lake County, State of Utah, and is described as follows:

Beginning at a point which is North, 342.25 feet and West 165.00 feet from the Southeast corner of Section 19, Township 2 South, Range 1 East, Salt Lake Base and Meridian and said point being on North boundary of Hidden Village P.U.D. and running thence, South 89°45'00" West 940.50 feet along said boundary thence, North 20°50'00" East 8.10 feet thence, South 88°51'00" West 57.00 feet thence, North 20°20'00" East 171.00 feet thence, North 5°19'43" East 154.59 feet thence, North 89°45'00" East 1083.25 feet thence, South 0°12'47" East 249.15 feet thence, South 88°45'00" West 165.00 feet thence, South 0°12'47" East 70.92 feet to the point of beginning.

new 4-005 new 8-14-83

EXHIBIT "B"

DEPOSITION OF IRIS MELEHES

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IN THE DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH

COUNTRYSIDE HOMEOWNER ASSOCIATION, :
a Utah Nonprofit Corporation, :
Plaintiff, : DEPOSITION OF:
 : IRIS MELEHES
 :
vs. :
JOHN MELEHES AND IRIS MELEHES, : CIVIL NO. C-85-1239
 :
Defendants.

Pursuant to Notice, and on the 11th day of
April, 1985, commencing at the hour of 2:30 p.m., the dep-
osition of Iris Melehes was taken at 10 Exchange Place,
Suite 900, Salt Lake City, Utah, before Jill S. Bohling, a
General Reporter and Notary Public in and for the State of
Utah.

APPEARANCES

Damian C. Smith, Attorney-at-Law, Snow,
Christensen & Martineau, 10 Exchange Place, 9th Floor,
Salt Lake City, Utah 84111, Telephone 322-9128, appearing on
behalf of the plaintiff.

John Caine, Attorney-at-Law, 2568 Washington
Boulevard, Ogden, Utah 84401, Telephone 399-4191, appearing
on behalf of the defendants.

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I N D E X

WITNESS:

IRIS MELEHES

EXAMINATION BY MR. SMITH

PAGE 3

1 P R O C E E D I N G S

2 (Whereupon, Iris Melehes, having first
3 been duly sworn to tell the truth, testified
4 upon her oath as follows:)

5 EXAMINATION

6 BY MR. SMITH:

7 Q First, I guess we ought to make sure we know how
8 to pronouce your name. Is it Melehes?

9 A That's right.

10 Q Mrs. Melehes, is it?

11 A Yes.

12 Q Okay. My name is Damian Smith. We represent the
13 plaintiff in this matter. Have you had your deposition
14 taken before?

15 A Yes.

16 Q So you're aware of generally the procedures?

17 A No. It's been a long while. I've only had it
18 once and that was ages ago.

19 Q Okay. If you have--.

20 A Twenty years.

21 Q If you have any questions, feel free to ask
22 Mr. Caine about any procedures, and I'm sure if he feels
23 I'm over stepping my bounds, he will butt in and keep me
24 honest.

25 You're aware that the testimony is being taken,

1 and it's under oath, and that may be used later in court
2 proceedings for various purposes provided by the court
3 rules. First let me have you state your full name and
4 address.

5 A Iris Melehes, and the address is 6886 South 7th
6 East.

7 Q Which city?

8 A Midvale.

9 Q Midvale?

10 A Yes.

11 Q And are you married?

12 A Yes.

13 Q And what's your husband's name?

14 A John.

15 Q Okay. He's one of the defendants in this matter,
16 correct?

17 A Yes.

18 Q Does he reside in the same address?

19 A Yes.

20 Q Is this address one of the condominiums in
21 question in this case?

22 A Yes.

23 Q Okay. Do you own more than one condominium unit?

24 A Yes.

25 Q What's the address of the other one?

1 A They're the same. One is called the office,
2 and one used to be number 25, and now it's 637.

3 Q How does the 637 fit in with the other address?
4 Is that the east coordinate?

5 A It's just--well, they have changed my address
6 several times since I've moved there. One is 6910 South
7 637 East.

8 Q Okay. Are the condominium units separately
9 numbered within the development so that we could determine
10 where they are? Does each one have a separate street
11 address is I guess what I'm asking.

12 A I'm not sure. They used to just be numbered like
13 a simple number, and then the post office decided to change
14 us and give us boxes, and ever since then, there's a mixup
15 on addresses and mail.

16 Q Internally within the condominium unit, do your
17 two condominiums have an internal number within the
18 condominium?

19 A One does, the other doesn't.

20 Q The one is 725 did you say?

21 A 637.

22 Q 637? I'm sorry.

23 A And the other one is called the office, and if you
24 call up Mountain Fuel, they will ask you where you live and
25 you have to say the office. It's on the record as the

1 office.

2 Q Okay. Do you live in the office part or in the
3 other part?

4 A I live in mostly the condominium part. And then
5 the office part when I get--when the business--when my job
6 is too much for me and I have to get away or when people
7 come to stay, I'm usually in the condos.

8 Q I'm getting confused so maybe I can clear it up.
9 There are two condominiums. One is called the office and
10 one is called number 637, correct?

11 A Yes.

12 Q Are they segregated separate entrances and so
13 forth?

14 A Yes.

15 Q Which of those two do you reside in?

16 A 637.

17 Q Okay. Are they configured approximately the same?

18 A No.

19 Q Okay. Can you tell me how they are different?
20 First start with the office. What rooms does that have in
21 it? The condominium known as the office.

22 A That's a big, open area, and it has a bath that
23 is not finished, a loft, and a so-called kitchen area that
24 is not finished.

25 Q How many rooms? The loft, the open area which

1 includes the kitchen?

2 A No. No, there's a little kitchen area that's
3 about twice the size of this table, and the bathroom is
4 about the size of this table.

5 Q Okay. And when we say this table, the table is
6 what? About 3½ by 8 feet. The kitchen area is within
7 a larger room; is that correct?

8 A No.

9 Q There's a separate area for a kitchen?

10 A Yes.

11 Q Is that not completed?

12 A Right.

13 Q And then there's an open room?

14 A Right.

15 Q And then there's a bathroom?

16 A Right.

17 Q And there's a loft over?

18 A Right.

19 Q Okay. The loft area, if you were to put a bed in
20 it, would that be where the bedroom would be?

21 A Yes. I have a bed there.

22 Q In the loft? Okay. How about number 637? How
23 is that configured? How many bedrooms does it have?

24 A Two bedrooms, a kitchen/dining area, a living
25 room, a loft and a bathroom.

1 Q Okay. Are you employed?

2 A I'm self-employed.

3 Q Okay. What's the name of your business?

4 A Iris Medical. Well, I have two names.

5 Insurance Consultant Systems.

6 Q Insurance Consultants Systems?

7 A Consultant Systems.

8 Q First, Iris Medical. Is that a corporation?

9 A No.

10 Q Do you understand what a proprietorship is?

11 A I'm the owner.

12 Q Okay. You own it all?

13 A Yes.

14 Q Your husband does not have any interest in

15 Iris Medical?

16 A Well, he let's me run it, you know, but we're--.

17 Q You do it together?

18 A We're partners in marriage, and we're partners

19 in business. But I'm in charge of that. He stays pretty

20 much out of that.

21 Q Has he made investments in that business,

22 Iris Medical?

23 A No.

24 Q Okay. How is it capitalized? Through bank loans?

25 Iris Medical.

1 A I think so. That--I have a line of credit. Is
2 that what you mean?

3 Q Okay. The line of credit, is that in your name
4 or in the name of both you and your husband?

5 A It's in mine and my husband's. I had a partner
6 once, an ex-partner, but I don't know if he's a partner.
7 He got his name on our line of credit which made my husband
8 very unhappy, but it wasn't originally set up that way
9 though.

10 Q This person is no longer affiliated with the
11 business?

12 A No, he is not.

13 Q Does he live in the vicinity? Does he live--.

14 A He lives in Kearns in St. George.

15 Q What's the address of Iris Medical Business Office?

16 A I have two addresses.

17 Q Okay.

18 A And the one is the unit number 637, and the other
19 is 2020 West 2100 South.

20 Q 2020 West?

21 A 2100 South.

22 Q We'll get back to that in a moment. Insurance
23 Consultant Systems. Who owns that business?

24 A I do.

25 Q Same way as the other business?

1 A Yeah.

2 Q Okay. You and you husband essentially are
3 partners?

4 A Well, yeah, like marriage.

5 Q Fine. Okay. Is that incorporated?

6 A No.

7 Q Okay. Have you filed any business name certifi-
8 cates or anything with respect to either business?

9 A No.

10 Q What is the address--business location of Insurance
11 Consultant Systems?

12 A I've always had that as my home address.

13 Q That's number 637 as we've defined today?

14 A (Nodding.)

15 Q No other location for that particular business?

16 A No.

17 Q What is your role in Iris Medical?

18 A Owner/manager.

19 Q Okay. Do you have any employees?

20 A No.

21 Q What's the business of Iris Medical?

22 A It is insurance billing, and billing and
23 collection. I mean you collect money. We're not a
24 collection per se. It's just billing. When you bill, you
25 collect money.

1 Q Okay. Who are your clients? Are they doctors?
2 A Yes.
3 Q Exclusively?
4 A Yes.
5 Q Okay. That's Iris Medical?
6 A Yes.
7 Q The medical refers to the fact that your clients
8 are doctors, and you collect the bills?
9 A Yes.
10 Q Are you the sole employee of Iris Medical?
11 A Yes. I never call myself an employee, though.
12 Well, I'm self-employed. That's--.
13 Q Okay. I understand that. I'm not trying to be
14 too cute with the legal distinctions there, but I'm trying
15 to--what sort of a facility is the one located at 2020 West
16 2100 South?
17 A It is Salt Lake Industrial Clinic.
18 Q An industrial clinic?
19 A Yes. And they practice exclusively industrial
20 emergency medicine. We have one room in their facility.
21 Q You collect the bills for them?
22 A Yes.
23 Q Are these MDs then, these people in the industrial
24 clinic?
25 A Yes.

1 Q You just have a room there?

2 A Yes.

3 Q Is it segregated with the rest of the clinic?

4 A No. It's part--it's part of the clinic. There's
5 one little hall and you can close the door. It's in the
6 back corner, the northwest corner.

7 Q Okay. Is it kind of like an examination room
8 that would be in a clinic where you can close off the room,
9 but otherwise it's open to a hall?

10 A Yes. But it's a large room, very large.

11 Q Okay. What percentage of your working time do
12 you spend at Iris Medical?

13 A The majority of it.

14 Q Okay. Is Salt Lake Industrial Clinic your
15 largest client?

16 A No.

17 Q How many doctors do you collect for?

18 A Twenty-six. Don't quote me. It's between 26, 28.

19 Q Between 26 and 28?

20 A Right, in that line.

21 Q Typically you obtain a percentage of what you
22 collect as your fee?

23 A Yes.

24 Q Now, the Insurance Consultant Systems, what sort
25 of a business is that?

1 A That is procedure and diagnostic coding.

2 Q What does that mean in lay terms?

3 A That means when a doctor does an examination,
4 then you read the procedure that he performed and translate
5 it into an insurance code which makes it payable--a payable
6 claim.

7 Q Okay. Does that business have any employees
8 besides yourself?

9 A No.

10 Q Let me ask you with respect--how much of your
11 work time do you spend in the Insurance Consultant
12 Systems?

13 A How much of my working time?

14 Q Yes.

15 A Oh, the two are intertwined so it's probably a
16 fourth. But if you don't get the right codes on, you can't
17 collect the bill, so they're intertwined, and it's really
18 hard to separate them from a standpoint.

19 Q How are you compensated for the services as
20 Insurance Consultant Systems?

21 A A percentage of the amount billed.

22 Q Is that a part of or an addition to the amount
23 that Iris Medical gets?

24 A It is a part of, but it's a different contract.

25 Q With the doctors?

1 A Yes. It's not of the amount billed. It's of the
2 amount collected, but it's a portion of that.

3 Q Okay. Of these 26 to 28 doctors that you serve
4 by Iris Medical, how many do you have separate contracts
5 pertaining to this Insurance Consultant Systems?

6 A They're all Insurance Consultant System's accounts
7 except three.

8 Q Okay. So with the exception of those three, you
9 do the same things for all of the doctors with both
10 businesses, correct?

11 A Yes.

12 Q You code their diagnostic procedures or whatever?

13 A Yes.

14 Q And then you send the insurance companies to
15 collect, right?

16 A Yes.

17 Q Do you ever collect directly from the patients
18 themselves?

19 A Yes.

20 Q Okay. Let me ask you whether or not you have any
21 employees with Iris Medical, whether you have any people
22 who assist you who receive compensation.

23 A Yes. I don't know how to answer this except
24 there's--what do you call--subcontractor or how do I say
25 that? They contract with me to do--.

1 MR. CAINE: Independent contractors.

2 A So they--well, a lot of times people will approach
3 me because I have a reputation for maximizing reimbursement,
4 and so people will contact me and say if I get another
5 opportunity for a contract, would I keep them in mind or
6 they would like to assume a contract.

7 Q Now, when you distinguish in your own mind between
8 an employee on the one hand and a subcontractor or
9 independent contractor on the other, what is the difference
10 in your mind between the two?

11 A In my mind, if I had an employee--

12 Q Yes?

13 A --I would demand they came to work at a certain
14 time and--well, it would be more like under my thumb and
15 direct supervision and not free lancing or not self-employed.
16 Self-employed is you agree to perform a job and you do it
17 the way you want to do it or the way that is best for you.

18 Q Okay. Now, another difference, of course, is that
19 you don't have withholding and so forth for independent
20 contractors, correct?

21 A Yes, that's true. I didn't think in that line.

22 Q All right. How many of these independent con-
23 tractors work with Iris Medical?

24 A Probably--well, 10 to 15.

25 Q Okay. And what do they do for Iris Medical?

1 A They will go to a hospital and input on a
2 computer that ties into a computer that I have at 637--
3 number 637.

4 Q Okay.

5 A And they contract to do this job on a timely
6 basis and to meet months end and so on.

7 Q Okay.

8 A We go by the month from the first of the month to
9 the last of the month, and they contract to get the informa-
10 tion on the computer.

11 Q All right. In your business as Iris Medical and
12 or Insurance Consultant Systems, how much of your personal
13 time do you spend at number 637 in that business?

14 A Oh--.

15 Q By how much, I mean what percentage of your time
16 or business time do you operate out of that location?

17 A That varies. I have worked 16 hours a day seven
18 days a week, you know. And it depends. When the demand
19 is there I do it.

20 Q Okay. So when the work is there to be done, you
21 do it at 637? Is that what you're telling me?

22 A I do a lot of it at 637. I do it at other
23 facilities.

24 Q Okay. You may do some at this--

25 A --2020 West.

1 Q 2020 West 2100 South location?
2 A Yes, I do.
3 Q Tell me what facilities you have at 637 relating
4 to the business.
5 A The computer.
6 Q Okay. What kind of computer?
7 A A Wang.
8 Q Okay. What number?
9 A 2200.
10 Q Wang 2200? And tell me the configuration of
11 that machine. How many components? What size room does
12 it take to house that computer?
13 A I just have it in my bedroom.
14 Q Okay. When you say your bedroom, is that where
15 you sleep?
16 A No. It's in the one down the hall.
17 Q Is there a bed in that bedroom?
18 A No.
19 Q Is there anything besides the computer and
20 business related things in that bedroom?
21 A That--I try to keep the business in that room.
22 Q Okay. How many components to the Wang 2200
23 System?
24 A What do you mean?
25 Q Free standing components. Do you have a printer?

1 A Yes.

2 Q A CPU?

3 A Yeah. You know more than I do.

4 Q Well, I'm just--okay. You've got at least two

5 components. What else? Do you have separate disc drives

6 and things like that?

7 A Yes.

8 Q I'm trying to get an idea of how much space the

9 system takes up there.

10 A The normal bedroom, you know.

11 Q It takes up the bedroom basically?

12 A Well, maybe. Yes, maybe. No, because I used to

13 have another computer in there. When I first moved in,

14 we had the thing wired and everything--prewired by the

15 condo people, and in preparation for this other computer,

16 which was a Data Point, the Data Point was twice the size

17 as the Wang. Then overnight I picked up a lot of contracts

18 and saturated the Data Point and got the Wang, and the two

19 computers were in the bedroom at the same time.

20 Q Did the Wang have greater capacity than the

21 Data Point?

22 A Yes.

23 Q And that's the reason you got it?

24 A Yes.

25 Q Okay.

1 A And then I moved the Data Point out. So when you
2 say does it fill the room, the two computers didn't fill
3 the room.

4 Q Well, I think maybe I can ask it a little better
5 this way: Do you keep anything else in that bedroom other
6 than business-related activities?

7 A Hopefully not.

8 Q Okay. Do you have a separate residence phone
9 and a separate one for Iris Medical?

10 A In that one, my residence phone, the telephone
11 company told me that I needed to keep them all like
12 business lines, but one was my personal phone and it's in
13 my bedroom.

14 Q What phone numbers do you operate out of there?

15 A 566-8700 and 566-7580, and my personal phone is
16 566-8730.

17 Q So the two numbers, 8700 and 7580 are business
18 lines?

19 A (Nodding.)

20 Q And the 8730 number, is that listed in the phone
21 book as Iris Medical or as Iris Melehes?

22 A I believe Iris Melehes.

23 Q Okay. These independent contractors, how many
24 in a given day will visit condo 637 as part of their
25 business with Iris Medical?

1 A A high number, I would say six; and a low number
2 is zero.

3 Q At one time any number up to six might be there
4 at one time?

5 A Not usually at one time. You asked how many
6 visited there in a day. Not necessarily at one time. If
7 they were there at one time, it's usually with clerks.

8 Q Okay. If you were to give an average, how many
9 of those independent contractors would visit in a normal
10 business day?

11 A I'm not sure. Maybe--maybe four.

12 Q And how long will each one typically stay?

13 A Depends on--usually just get with friends.

14 Q Pardon?

15 A We talk as friends, and so to do business, maybe--
16 I don't know if it would be four or five hours.

17 Q Okay. And how do they interface with your
18 computer?

19 A All my people?

20 Q Yes.

21 A One of them answers the phone, and she interfaces
22 to answer questions.

23 Q Okay. When you say one answers the phone, is
24 that person normally there most of the day?

25 A She's normally there most of the day. She is one

1 of the few that is. She also cleans my house.

2 Q So she's there during business hours during the
3 week?

4 A Yeah, most of the time. And I won't divide
5 cleaning the house from the other. Do you want me to
6 divide cleaning the house from the other?

7 Q Who pays the bill? Iris Medical or Iris Melehes
8 the individual?

9 A I can't divide my funds very well.

10 Q Your funds and Iris Medical's are intertwined?

11 A On occasion, yes.

12 Q Okay. This lady that answers the phone is also
13 an independent contractor?

14 A Yes. She also teaches swimming.

15 Q All right. What about the other people that come?
16 What is the purpose for their visit?

17 A Some of them pick up things and drop things off.

18 Q Do they ever use the computer in there?

19 A Yes. There's one that just came on board. She
20 was working for SOS, and then--and we use her for that
21 capacity to help my daughter because my daughter couldn't
22 keep up.

23 Q So your daughter works there, too?

24 A Yes.

25 Q Full time?

1 A Yeah. She works full time.

2 Q So we've identified three people so far that are
3 there full time in the business. Yourself, the phone
4 person, your daughter, correct?

5 A Yes.

6 Q Okay. Where does your daughter live by the way?

7 A She lives in--I want to say Granger, but it's down
8 by the Jordan River.

9 Q She does not live on the premises then?

10 A She does sometimes. She lives and sleeps with
11 the computer and then I go to the cottage.

12 Q Cottage meaning the office?

13 A Yeah, the office.

14 Q She has a residence, what we might call her
15 official residence at a place outside the condominium?

16 A She just moved, yeah.

17 Q So she comes in every day sometimes and stays late
18 but--.

19 A Sometimes stays all night. She lives there
20 sometimes with me.

21 Q Generally speaking, however, now that she moved
22 she lives away and then comes in, correct?

23 A Yeah. She spends time there and also at 2020,
24 you know, that other office.

25 Q Okay. We talked about these three people,

1 including yourself, that were there most of the time in
2 a business capacity. How about anybody else there on a
3 fairly regular basis at the premises? When I say premises,
4 I mean number 637.

5 A Well, there's one that comes in three to four times
6 a week.

7 Q Okay. And who's that? Is that a computer person?

8 A No. She just--she goes from the one office and
9 researches payments and helps me so that I can make refunds
10 to patients when they pay their bill twice.

11 Q How many hours a week does this person typically
12 come in?

13 A I should have got the payroll things. I mean
14 there are checks and things to see their hours. I don't
15 remember. Maybe 12 to 16, somewhere like that.

16 Q Okay. And your daughter is there typically how
17 many hours in a day?

18 A I don't know how many hours in a day because my
19 other daughter writes out checks and so she reads all this
20 stuff and I don't know how many hours.

21 Q Sometimes very long hours, though, correct?

22 A Sometimes long hours to work and sometimes long
23 hours to visit and to stay.

24 Q Okay.

25 A I mean, she's not always working. I have people

1 who come to visit me, you know, like a friend.

2 Q Okay. Your one other daughter that handles
3 financing, I take it the checkbook and so forth?

4 A Yes.

5 Q Where does she operate from?

6 A Layton.

7 Q How much time does she spend at 637?

8 A To work?

9 Q Yes.

10 A None.

11 Q She does all the work off the premises then?

12 A She doesn't do it at 637.

13 Q She does not? Okay.

14 A No.

15 Q Okay. If you were to take a typical subcontractor
16 other than the ones you mentioned, the phone person, your
17 daughter, this other person that comes in 12 to 16 hours
18 a week, how many hours a week typically might that sub-
19 contractor visit the premises at 637 and or the office?

20 A A normal subcontractor?

21 Q Yes. I mean other than these ones you've
22 mentioned. If there are other categories, let me know.

23 A Well, I'm trying to think. There's some that
24 never come up, you know, and if they do, some of them,
25 they all come up for personal things. But they just don't

1 have a need to come there.

2 Q Okay. How do they connect with your computer?

3 Over the telephone?

4 A Yes.

5 Q Okay. Is there ever a need for them to come

6 in and actually use your computer, any other subcontractors?

7 A Well, no. There's not even a need really for--

8 except for my daughter--for anyone to actually come on the

9 premises and access the computer.

10 Q Okay. For what reason might these other sub-

11 contractors come then? To pick up checks or--.

12 A No. Like if my daughter gets behind or if they

13 need special instructions or things like that that she--she

14 feels that she needs them there, then she'll have them come

15 in.

16 Q Do you ever have group meetings with subcontractors?

17 A Yes, I always have.

18 Q Where do you hold those?

19 A I hold them at my daughter's house in Layton, and

20 I hold them--I did hold them--some of them at 637, and then I

21 hold some of them--the meetings at the office.

22 Q Are these weekly meetings typically?

23 A No.

24 Q What interval?

25 A We usually try to get together once a month. And

1 it's from the hour of five until six, and then we socialize
2 as friends maybe for an hour, maybe for five minutes. And
3 sometimes we socialize for four hours.

4 Q Okay. Do you have a separate phone number for
5 Insurance Consultant Systems?

6 A I have always used that as my private phone.

7 Q And when you give out that number, you'll give
8 out 8730?

9 A Yes, or I'll give out my--the one in the office.

10 Q What's the number in the office?

11 A 566-4747, and that's the only one I give out.

12 Q That's the number you give out for Insurance
13 Consultant Systems?

14 A That one and then I have a Provo line also.

15 Q When you say Provo line, you mean people can
16 call from Provo on a Salt Lake line?

17 A Yes.

18 Q What's the number?

19 A 375-7555.

20 Q Does the receptionist--phone person also answer
21 the phone for Insurance Consultant Systems if--.

22 A When the phone rings, she answers usually.

23 Q So between the office and 637, you have four lines
24 coming in, four Salt Lake lines and one Provo line?

25 A We have some computer lines, and I have no idea

1 what the numbers are.

2 Q Okay. So you have a lot of computer lines also
3 coming into the office or into 637?

4 A We have some computer lines.

5 Q Okay.

6 A Oh, and I also have another phone at the office.

7 Q What's that?

8 A 566-4761.

9 Q Can all of these phones be answered from one
10 location?

11 A No.

12 Q Okay. Are the ones in 637, are those three
13 numbers, 8700, 7580, and 8730?

14 A Yes.

15 Q Any others?

16 A Yes, the Provo.

17 Q The Provo number? And the 566-4747 and 4761
18 numbers can only be answered at the office?

19 A Yes.

20 Q Is anyone living in the office?

21 A Only me, and I go back and forth.

22 Q Do you sometimes stay in the bedroom or the loft?

23 A Yes, when my daughter sleeps with the computer.

24 Q Okay. Do doctors ever visit at 637 or the office?

25 A I'm afraid so. I discourage it, but they do come

1 by anyway. I usually go to them.

2 Q Okay. What does your husband do for a living?

3 A He's retired.

4 Q Okay. So the Shekles come in mainly by this
5 business, correct?

6 A Yes.

7 Q Okay.

8 A He's retired, and he lives in Wyoming, too.

9 Q Okay. Well, then, Mrs. Melehes, is there much
10 doubt you're running a business out of the condominiums?

11 A I have always run a business out of my home.

12 Q Okay. Including 637?

13 A Yes. I'm self-employed. I operate my business.
14 It is computer--it is a computer billing business.

15 MR. SMITH: I think that's all the questions
16 I have.

17 MR. CAINE: I don't have any. No questions.
18 (Whereupon, at the hour of 3:10 p.m., the
19 proceedings came to a close.)
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State of Utah)
 ss.
County of Salt Lake)

IRIS MELEHES, DEPOSES AND SAYS: That she has read the foregoing testimony consisting of pages 1 through 28 both inclusive, and that the same is a true and correct transcription of testimony given at the times and places herein set forth except as it has been corrected by her in ink, reasons for said corrections being given therefor and initials by said corrections having been affixed thereto.

Subscribed and sworn to before me this _____
day of _____, 1985.

Notary Public
Residing at _____

My commission expires:

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REPORTER'S CERTIFICATE

State of Utah)
 ss.
County of Salt Lake)

I, Jill S. Bohling, do hereby certify that the deposition of Iris Melehes, witness in the foregoing deposition named, was taken before me, a Notary Public in and for the State of Utah, and General Reporter, residing in Salt Lake City, Utah, at the time and place shown herein;

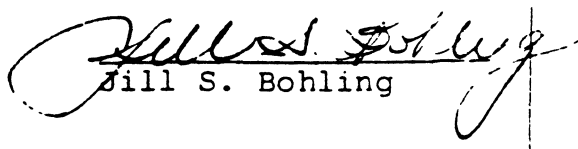
That the said witness was by me, before examination, duly sworn to testify the truth, the whole truth, and nothing but the truth in said cause;

That the testimony of the said witness was reported by me in stenotype, and was thereafter by me caused to be reduced to typewritten form consisting of pages 1 through 28 both inclusive;

That the same constitutes a true and correct transcription of said testimony so taken and transcribed and that the said witness deposed and said as in the foregoing annexed deposition set out.

I further certify that I am not of kin or otherwise associated with any of the parties herein, or their counsel, and that I am not interested in the event hereof.

Witness my hand and official seal at Salt Lake City, Utah, this 16th day of April, 1985.


Jill S. Bohling

WIDGLEY
& ASSOCIATES
Jill S. Bohling

EXHIBIT C

AFFIDAVIT OF JAY L. RHODES

DAMIAN C. SMITH (A2991)
DAVID J. CASTLETON (A0598)
SNOW, CHRISTENSEN & MARTINEAU
Attorneys for Plaintiff
10 Exchange Place, Eleventh Floor
P. O. Box 3000
Salt Lake City, Utah 84110
Telephone: 521-9000

IN THE THIRD JUDICIAL DISTRICT COURT FOR SALT LAKE COUNTY
STATE OF UTAH

COUNTRYSIDE HOMEOWNERS
ASSOCIATION, a Utah
nonprofit corporation,

Plaintiff,

AFFIDAVIT

v.

JOHN MELEHES and IRIS
MELEHES,

Civil No. C-85-1239

Defendants.

Judge John A. Rokich

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

JAY L. RHODES, being first duly sworn, on oath states
as follows:

1. I am property manager of Countryside Condominiums,
having been hired as such by the Homeowners Association for
the condominiums.

2. I have authorization to make this Affidavit in support
of the Association's Motion for Summary Judgment.

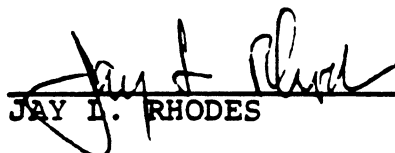
3. In connection with my duties as property manager, I spend a considerable amount of my time at the condominium development. In connection with my duties, I am aware of vehicles owned by condominium unit owners in the development.

4. I consistently observe five to ten vehicles parked in the vicinity of defendants' condominiums. The vehicles are there during work hours and typically leave after work hours.

5. In connection with the performance of certain electrical work, I observed, as recently as June 6, the condominium owned by the defendants known as the sales office. The furniture in said condominium included desks, computers, multiple telephones, and other business type equipment. Although I did not go into the loft area, I observed no part of the condominium that was not being used for business purposes.

6. The document attached as Exhibit "A" to plaintiff's Complaint is a true and correct copy of the Declaration of Condominium of the Countryside Condominium Project duly on file in the County Records office as Entry No. 3706729 in Book 5405 at page 2309 through 2342.

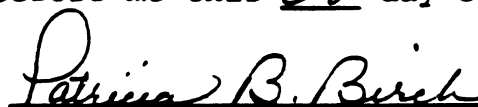
DATED this 28th day of June, 1985.


JAY I. RHODES

SUBSCRIBED AND SWORN TO before me this 28th day of June, 1985.

My Commission Expires:

7/10/88


PATRICIA B. BIRCH
NOTARY PUBLIC
Residing in Shut Lake County, WA.

MAILING AFFIDAVIT

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

Patricia B. Birch, being duly sworn, says:

That she is employed in the offices of Snow, Christensen
& Martineau, attorneys for plaintiff

that she served the attached Affidavit

upon the party(ies) listed below

Maurice Richards, Esq.
2568 Washington Blvd.
Ogden, Utah 84401

by placing a true and correct copy thereof in an envelope and
causing the same to be mailed, postage prepaid on the 28th day
of June, 1985.

Patricia B. Birch

SUBSCRIBED AND SWORN to before me this 28th day of

June, 1985.

Caroline J. Jones
Notary Public
Residing in Salt Lake City, UT

My Commission Expires:

June 14 1987

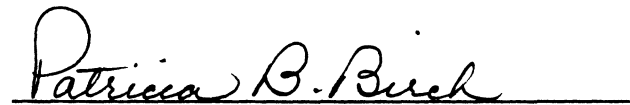
MAILING AFFIDAVIT

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

DAMIAN C. SMITH, being duly sworn, says that he is the attorney for the Respondents and that he served the attached Brief of Respondents upon John T. Caine, Esq., of Richards, Caine & Richards, 2568 Washington Blvd., Ogden, Utah 84401, by placing four (4) copies of said brief in an envelope and causing the same to be mailed, postage prepaid on the 24th day of April, 1986.



SUBSCRIBED AND SWORN to before me this 24th day of
April, 1986.



Notary Public
Residing in Salt Lake County, Utah

My Commiseion Expires:

July 10, 1988